United States Court of Appeals

for the Second Circuit

APPENDIX

No. 74-2658

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

FRED STARK and JAMAICA 201 ST. CORP., INC. and
JAMAICA 202 ST. CORP., INC.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

UNITED STATES COURT OF APPEALS
FILED
MAR 21 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

ABS DUPLICATORS, INC.–1732 Eye Street, N.W.–Washington, D.C.–298-5537

PAGINATION AS IN ORIGINAL COPY

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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

FRED STARK AND JAMAICA 201 ST. CORP., INC. AND JAMAICA 202 ST. CORP., INC.

and

Case Nos. 29-CA-3600
29-CA-3601

LOCAL 32B, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO

Elizabeth K. Johnson, Esq., for the General Counsel.
Charles Katz, Esq., New York, N.Y., for the Respondent.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Fred Stark & Jamaica 201 St., Corporation, etc.

Cases Nos.: 29-CA-3600 & 29-CA-3601

10.18.73	Charge filed in Case Nos. 29-CA-3600 & 29-CA-3601
12.28.73	Order Consolidating Cases, Complaint and Notice of Hearing, dated
1.10.74	Request for extension of time to file answer, dated
1.10.74	Order Extending time to file Answer, dated
1.24.74	Respondent's Answer received
2. 5.74	Notice of Pre-Hearing Conference, dated
2.11.74	Request for adjournment, dated
2.14.74	Order rescheduling Hearing, dated
2.15.74	Board's Telegram postponing trial, dated
3.12.74	Hearing Opened

3.19.74	Hearing Closed
5.31.74	Administrative Law Judge's Decision, issued
7.31.74	Respondent's Exceptions to the Decision of the Administrative Law Judge, received
9. 6.74	Decision and Order issued by the National Labor Relations Board, dated

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[Dated May 31, 1974]

* * * * *

DECISION

Statement of the Case

CHARLES W. SCHNEIDER, Administrative Law Judge: On October 18, 1973, Local 32B, Service Employees International Union, AFL-CIO, the Union, filed unfair labor practice charges against Fred Stark, Jamaica 201 St. Corp., Inc. and Jamaica 202 St. Corp., Inc., herein collectively referred to as the Respondent, alleging commission by the Respondent of unfair labor practices in violation of the National Labor Relations Act (29 U.S.C. 151 *et seq.*). On December 28, 1973, the Regional Director issued an Order Consolidating the cases, accompanied by a Complaint and Notice of Hearing. Service of the charges, the Order, and the Complaint and Notice of Hearing was duly made on the Respondent and the Union.

The Complaint alleged in sum that the Respondent, in violation of Section 8(a)(1) and (3) of the Act, discharged a number of employees, identified hereafter, interrogated employees concerning union matters, and warned employees against affiliating with or supporting the Union. The Respondent duly filed its answer, thereafter amended, denying the commission of unfair labor practices.

Pursuant to notice a hearing was held in Brooklyn, New York on March 12, 13 and 19, 1974. The General Counsel and the Respondent appeared and

were represented by counsel. All parties were afforded full opportunity to be heard, to introduce material evidence, to present oral argument, and to file briefs. Briefs were filed by the General Counsel and the Respondent on April 29, 1974, and have been considered.

Upon consideration of the entire record and the briefs, and from my observation of the witnesses, I make the following:

Findings of Fact

I. The Business of the Respondent

Stark is a copartnership composed of Fred Stark, Harold Stark and Rita Stark, copartners, doing business under the trade name and style of Fred Stark.

Jamaica 201 is and has been at all times material herein a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

Jamaica 202 is and has been at all times material herein a corporation duly organized under, and existing by virtue of the laws of the State of New York.

At all times material herein Stark has maintained its principal office and place of business at 198-10 Jamaica Avenue in the City of New York and State of New York where it is, and has been at all times material herein, engaged in the ownership and rental of commercial and residential buildings and properties.

At all times material herein Jamaica 201 and Jamaica 202 have maintained their principal offices and places of business at 198-10 Jamaica Avenue, in the City of New York, and State of New York where they are, and have been at all times material herein, engaged in the rental of residential real estate.

Stark, Jamaica 201 and Jamaica 202, herein collectively referred to as the Respondent, are, and at all times material herein have been, affiliated businesses with common officers, ownership, directors and operators, and constitute a

single integrated business enterprise; the said directors and operators formulate and administer a common labor policy for the aforenamed concerns, affecting the employees of said concerns.

During the past year, which period is representative of its annual operations generally, the Respondent in the course and conduct of its business, purchased and caused to be transported and delivered to its places of business, oil and other goods and materials valued in excess of $50,000 of which goods and materials valued in excess of $50,000 were transported and delivered to it, and received from, other enterprises located in the State of New York, each of which other enterprises had received the said goods and materials in interstate commerce directly from states of the United States other than the state in which it is located.

During the same period, the Respondent received rental revenue from residential properties in excess of $500,000 and rental revenue from commercial properties in excess of $100,000. Said rental revenue from commercial properties included rent of at least $25,000 from enterprises which annually purchase goods valued in excess of $50,000 from sources located outside the State of New York.

Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

Local 32B, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Summary

On April 30, 1973, seven of the Respondent's employees signed authorization cards for the Union. On May 10, 1973, the Respondent received a letter from the Union requesting recognition. Within a week thereafter the

employment of 6 of the 7 employees was terminated. The General Counsel contends that the terminations were for union activity; the Respondent contends that two of the terminations were voluntary quittings and that the remainder were for cause.

The Designation of the Union

On April 17, 1973, the Respondent signed a contract with the Union covering one of the Respondent's properties not involved here. Upon learning of this, George Peters, a foreman for the Respondent, contacted the Union and arranged for an organizational meeting at his apartment.

The meeting was held on April 30, 1973. It was attended by Peters, and by employees Charles Thompson, Jeffrey Maksymchak, Roger Evans, Wayne Huff, Kenroy Bishop, and Felipe Ortiz. The Union was represented by Tony Poccio, an organizer. Each of the seven employees signed an authorization card at the meeting. The Union thereafter requested recognition by letter dated May 8, which the Respondent received on May 10, 1973.

On the following day, May 11, 1973, the employment of Thompson, Evans, Huff, and Maksymchak was terminated.

At some unidentified date after receiving the Union's letter, Fred Stark, one of the Respondents, telephoned Rudolph Larmond, an official of the Union, and asked what it was "all about." Advised by Larmond that the Union wished to represent the employees and would like to negotiate, Stark replied that there must be "some mistake" and asked who the people were. Larmond gave Stark two or three names, to which Stark replied: "Oh, I fired them. They're all drunk, and I fired them."

Larmond's testimony, which is not denied, is credited.[1]

On May 16 Felipe Ortiz was terminated. And on the following day, May 17, George Peters was discharged.

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[1] The Regional Director subsequently dismissed a refusal to bargain charge filed by the Union, on the ground that the Union did not represent a majority of the employees.

Contentions

The General Counsel contends that the six employees were discharged for their union activity. The Respondent contends that Thompson quit, that Evans and Huff were discharged for drunkenness, and Maksymchak for refusing to work. The Respondent asserts that Ortiz was not discharged but quit. With respect to Peters, the Respondent's contention is twofold: That Peters is a supervisor and not an employee under the Act, and that he was discharged for falsifying the reason he took a day off.

In essential particulars resolution of the issues is substantially dependent upon credibility determinations.

The terminations of Thompson, Evans, Huff and Maksymchak

On May 11, 1973, Harold Stark, an official of the Company, and the son of Respondent Fred Stark, directed Charles Thompson to take a crew consisting of Evans and Huff to a building in the process of renovation, remove debris from the structure, and haul it away in the Respondent's truck.[2]

During the morning the employees completed the work of cleaning up the first floor of the building and began work in the basement. That, however, was a more difficult job involving, among other things, the hauling of wet debris, including ashes, in 5 or 10-gallon pails, lugging them a considerable distance across the basement, up the stairs, and out to the truck. In the past in similar situations 5 or 6 men had been assigned to form a chain to perform the work. During or shortly after the lunch hour, Thompson suggested that more men were needed for the job. The others agreed. The three thereupon drove to the office of the Respondent some short distance away for the purpose of asking Harold Stark to provide more help.

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[2] Except as otherwise indicated the findings herein are based on uncontradicted and credited testimony. Where there is significant conflict on material facts credibility resolutions are made. Collateral occurrences which were the subject of testimony, but do not directly bear on the issues, have been omitted from the recital of facts.

They arrived at the office about 1 or shortly thereafter. When they arrived Thompson went inside, for the purpose, according to the testimony of the employees, to find Harold Stark. Stark was not in the office. The 3 employees then sat in the truck to await his arrival. While there they were joined by Maksymchak, a part-time student-employee, who was just reporting for work. Maksymchak was told by Stark's secretary to await the arrival of Helga Schenck, the Respondent's office manager. Miss Schenck was at that time at lunch and had left word that when Maksymchak arrived he should wait for her because she had an errand for him to do.

Thompson, Evans and Huff joined Maksymchak in the latter's station wagon to await the arrival of Harold Stark. While they were waiting, Maksymchak said that he was not feeling well, and did not think that he would work that day. Under the arrangement with the Respondent, Maksymchak's schedule was flexible, and he was not required to work regularly.[3]

A short while later Harold Stark arrived and approached the car. According to the testimony of the 4 employees, Stark asked Maksymchak whether he was going to work that day, Maksymchak responding in the negative, stating that he did not feel like working. Harold Stark looked at the others and said that they were discharged for being drunk.

Stark's version of the incident is as follows: All but Maksymchak were drunk. He asked the 4 men what they were doing there and why they hadn't finished the job. Thompson replied that they were not doing the

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[3] The testimony of Stark's secretary, Karen Gsell, is that when Thompson came into the office Maksymchak was already there waiting for Miss Schenck, that Thompson said that he had quit, and told Maksymchak that he wished to see him outside, and that the two then left.

Thompson denied saying that he had quit. The testimony of the employees, including Maksymchak, is that when Maksymchak arrived at the office, Thompson, Evans and Huff were sitting in the truck, waiting for Harold Stark to arrive.

In view of the whole pattern of events, and the subsequent occurrences, I conclude that Ms. Gsell misunderstood Thompson. It is not apparent, and no reason is suggested, why he should have quit, or waited with the others if he had. Cf. footnote 5.

work, Huff that they were done with it. Being unable to get anything more coherent from Thompson, Evans, and Huff because of their drunken condition, Stark told those three that they were drunk, had not done the work, and were fired. As to Maksymchak, Stark asked him whether he was going to work or stay there. Receiving no response, Stark said that if Maksymchak did not want to come to work, he was fired too. He then walked away.

All four employees denied that they were drunk. All testified that they had not had anything to drink that day. Admittedly they did not deny Harold Stark's accusation: Their testimony as to that is that they had no opportunity, that after discharging them, Stark immediately walked away.

Credibility resolutions as to this incident are made hereafter.

Maksymchak's requests for reinstatement

Maksymchak testified that on the day after the discharge he returned to the Respondent and asked Harold Stark for his job back. According to Maksymchak, Harold Stark told him to wait a few weeks "till things cool off." Over the next several months Maksymchak returned 4 or 5 times without success. On the first occasion Harold Stark asked Maksymchak why he joined the Union, and characterized Maksymchak's action "like stabbing me in the back." On a later occasion Stark told Maksymchak that he could have his job back if he got out of the Union. Maksymchak said that he would not do that, and thereafter ceased coming back.

Maksymchak's testimony concerning his requests for reinstatement is not denied. I do not consider Harold Stark's general testimony to the effect that he did not "discuss" the Union with employees to constitute a denial of Maksymchak's testimony as to his reinstatement requests. Credibility findings as to the incidents are made hereafter.

Evans' request for reinstatement

On the Monday following the discharges, when Roger Evans returned to the Respondent's to get his pay, he asked Harold Stark whether Stark could

not give him and Thompson another chance. Harold Stark's testimony is that he said no – "that is the last chance you had."

The May 14 conversation between George Peters and Fred Stark

On Monday, May 14, 1973, Fred Stark and Harold Stark came to a job site at 145th St. and Jamaica Avenue. According to the testimony of George Peters, while Harold Stark was inside the building, Fred Stark called Peters aside outside the building, and told Peters that he had just fired four of Peters' men because they had joined the Union, naming them. Fred Stark then said to Peters, "I'm surprised at you, Mr. Peters, you're supposed to be my foreman, you know, you're not supposed to be joining a union. . . you stabbed me in the back." Fred Stark went on to say, however, that he would "forget all about it," that Peters could go back to work "and just stay away from the union." Peters' testimony is that he said that he would think about it.

Harold Stark admitted being at the location with his father on the day in question, but denied that such a conversation, or any conversation between his father and Peters, took place, terming it "impossible," because he was with his father during the entire time they were at the premises. Peters' testimony is that it was "impossible" for Harold Stark to have heard the conversation, because Harold was inside the building at the time. Fred Stark did not testify, though present in the hearing room throughout the hearing. The conflict is resolved at a later point.

The termination of Ortiz

Felipe Ortiz was a porter in one of the Respondent's apartment buildings, in which George Peters and his wife Marie lived. Ortiz' job was to keep the public portions of the interior of the building clean, and also the exterior, including the grounds. Ortiz was terminated on May 16, 1973, according to the General Counsel, because he refused to pick up dog manure on the grounds with his hands as ordered by Harold Stark. According to the Respondent, Ortiz quit rather than clean up the outside of the building.

Ortiz is primarily literate in the Spanish language. My estimate, from observation of him as a witness, is that he has small command of the English language. In addition he is affected with a severe physical speech handicap. I found him of such minimal intelligibility in the English language as to require the services of a Spanish interpreter. Because of the speech handicap, however, the interpreter also had difficulty with substantial portions of Ortiz' testimony, a material part of which he found untranslatable.

Ortiz' testimony to the effect that Harold Stark ordered him to pick up the dogs' droppings with his hands was corroborated by Mrs. Marie Peters and by employee Kenroy Bishop. Both testified, consistently with Ortiz, that Mrs. Peters and Ortiz protested that Ortiz should be allowed to get a shovel and broom from the basement but that Harold Stark insisted that Ortiz pick up the droppings with his hands. When Ortiz refused, Stark told him that if he would not do it, to go home.

Harold Stark denied that he ordered Ortiz to pick up the dog droppings with his hands. His testimony is that Ortiz refused to clean out litter, including dog manure, from several bushes on the grounds, claiming that that was not his job. Harold Stark's testimony was corroborated by Lawrence Moultrie, an employee.

Credibility resolutions are made hereafter.

May 17, 1973

1. The discharge of George Peters

On Tuesday, May 15, 1973, after work, George Peters told Fred Stark that he would not be in the next day. When Fred Stark asked him why, Peters replied that he had been spitting blood and that he was going to the Veterans' Administration Hospital.[4] According to Peters, Fred Stark told him to "make sure you stay away from the Union."

[4] Peters' undisputed testimony is that he had this condition as a consequence of an on-the-job injury incurred in the employment of the Respondent about December 1971.

Peters' statement to Fred Stark was untrue. The real reason he took off on May 16 was to take Charles Thompson, Roger Evans, Wayne Huff, and Jeffrey Maksymchak to the Union, where they gave affidavits concerning their discharges. Peters' testimony is that he did not tell Fred Stark the truth because of the warning he had previously received from Stark concerning the Union.

On May 16, in the morning, Peters took the discharged quartet to the Union headquarters in his car. They were apparently observed by someone who reported the matter to Fred Stark.

On the following morning when Peters reported at the office he was discharged by Fred Stark. According to Peters, Fred Stark said to him: "I see you went to the Union again yesterday. I told you to stay from the Union . . . evidentally, [sic] Mr. Peters, you don't learn . . . you're fired. Give me all your keys."

Fred Stark did not testify as to the discharge of Peters. Harold Stark testified that he was in the office at the time. He denied Peters' version of the incident. Harold Stark's testimony on direct examination as to the incident is as follows:

Q. What happened when Peters came in?

A. Well, he walked in and then my father told him, he says, "You are a liar and I don't trust you. You weren't at the VA Hospital when you said you were."
He says, "You are fired" and let him go. That is when he walked in.

Q. Did Peters say anything?

A. He didn't say anything. He just walked around and walked out.

Harold Stark also denied Peters' testimony that Fred Stark made the statements about the Union in the discharge interview, to which Peters had testified.

Credibility findings are made hereafter.

2. Harold Stark's statements to Kenroy Bishop

On the same morning, shortly after Peters' discharge, according to the testimony of Kenroy Bishop, Harold Stark spoke to him about the Union.

Bishop's testimony is that Harold Stark took him into the back of the office and told him that he must "give up on the union, because it won't come here." According to Bishop, Stark further said that "he had already fired everybody who had signed for the union, except me." Bishop testified that Harold Stark also said that he had just fired Peters, but did not say why, or indicate that it was because of the union.

Either on that occasion, or later in the day, according to Bishop, Harold Stark told him that "the Union is no good . . . they're going to mess this place up."

Harold Stark testified that he did not "discuss" the Union with employees. However, he did not specifically deny or refer to these conversations in his testimony. Credibility resolutions as to them are made hereafter.

Credibility Resolutions and Conclusions

As is apparent from the foregoing recital, the case revolves substantially around credibility resolutions. If the substance of the General Counsel's testimony is accepted the complaint is substantiated. If the substance of the testimony of the Respondent is accepted the complaint falls. It seems apparent that, in a number of instances, there must be deliberate falsification of testimony by one side or the other. It is not possible that there could be honest misunderstanding with respect to some of the incidents.

Both the General Counsel and the Respondent insist upon the credibility of their witnesses and the incredibility of the opposing testimony. The Respondent's brief is devoted almost wholly to an attack upon the credibility of the General Counsel's witnesses. To this end counsel for the Respondent has painstakingly analyzed all the evidence of the witnesses and has pointed out various inconsistencies in the testimoy of the witnesses for the General Counsel. These exist, but so do inconsistencies in the testimony of the

Respondent's witnesses. In arriving at the findings herein I have taken into consideration the fact that the Respondent had previously entered into a collective-bargaining contract with the Union covering another segment of the Respondent's operations.

In determining who is to be believed, certain background and objective factors must be considered. Thus, we begin with the fact that on the day after the Respondent received the letter from the Union advising the Respondent of the Union's claim to recognition, four of the seven employees who had designated the Union were terminated. And within 6 days thereafter two more were terminated. Coincidence, of course, is not a substitute for proof, but neither may it be ignored in determining the existence of proof.

Also, some of the General Counsel's evidence and testimony indicative of opposition by the Respondent to the Union is not specifically denied. As has been seen, Harold Stark told Kenroy Bishop that he had fired everybody who had signed for the Union except Bishop, and that the Union was no good and would mess the place up. The Respondent attacks Bishop's testimony as a deliberate lie. However, it has been noted that, although Harold Stark testified in general terms that he did not discuss the Union with employees, he did not specifically deny Bishop's testimony as to these statements. I do not find persuasive the supposition that the only remaining member of the group which had signed union cards who had not been discharged, and who at the time of his testimony was still in the Respondent's employ, would deliberately fabricate testimony against the Respondent. In addition it is to be noted that Bishop's testimony does not attribute to Harold Stark a declaration that Stark had fired the employees for union activity. I think it a fair inference that if Bishop were deliberately lying he would have added that admission by Stark. These factors appear to me confirmative of my conclusion, based on observation of Bishop's demeanor, that Bishop is a credible witness.

It will also be recalled that Maksymchak testified that after repeated efforts to have Harold Stark rehire him, Stark finally told him that he could

have his job back if he got out of the Union. This testimony is also not specifically denied. In the light of that fact, and the further fact that the Respondent offered no explanation for its failure to rehire Maksymchak, and from my observation of the witnesses, I credit Maksymchak's testimony in that regard.

In addition, in a number of important instances Harold Stark's testimony is not corroborated, though it was within the Respondent's power to do so. Thus, Fred Stark was not called as a witness, though present in the hearing room throughout the hearing. No explanation is advanced for this omission. In the incidents involving George Peters and Fred Stark, all disputed, the Respondent relies solely on the testimony of Harold Stark.

The Respondent, citing *N.L.R.B. v. Century Broadcasting Co.*, 419 F.2d 771, 776-77 (8th Cir. 1969), appears to contend that no adverse inference can be drawn from its failure to call Fred Stark. It is true, as the Court held in the *Century Broadcasting* case, that the failure of a respondent to present evidence has no effect on the burden of proof, and no inferences of wrongdoing can be drawn from the Respondent's failure to disclaim the Board's allegations. However, where the General Counsel presents evidence which, if accepted, establishes a material fact, the failure of a respondent to produce evidence, including testimony, in its possession or control with respect to the existence or nonexistence of the fact, is a relevant consideration in determining whether to find the fact. See *Goodyear Tire & Rubber Company*, 190 NLRB 84, 86, fn. 3; *N.L.R.B. v. Monumental Life Insurance Company*, 162 F.2d 340, 343 (6th Cir. 1947). The *Century Broadcasting* case is not contrary authority in that regard. The issue there was simply whether, in the absence of any evidence by the General Counsel to establish the existence of company knowledge of union activities, the Board could properly find that the Respondent's failure to introduce evidence denying such knowledge, warranted an inference that the knowledge existed. No such situation is presented here. In each

instance where significance has been found in the Respondent's failure to present evidence in its possession respecting a material issue, there is evidence in the record which, if accepted, establishes the existence of the fact found.

We turn then to the particular incidents which are in dispute.

The May 11 terminations

Here, too, the dispositive issue is which is the correct testimony, or which more closely approximates the facts: the General Counsel's or the Respondent's? The Respondent's position is that the General Counsel's witnesses lied.

We begin with the contentions: The General Counsel's is that Thompson, Evans, and Huff were awaiting the arrival of Harold Stark in order to get help on the job, that Maksymchak, because he was not feeling well, had tentatively decided not to work that day, and that none of the employees had had anything to drink. The Respondent's contention is that Thompson quit, that Evans and Huff were discharged for being drunk, and Maksymchak discharged for refusing to work.[5]

The Respondent's contention to the effect that Thompson quit is apparently based on the testimony of Karen Gsell, which was referred to in footnote 3, *supra.* As indicated there, I have concluded from all the circumstances that she misunderstood Thompson. I therefore find that Thompson was discharged.[6]

Harold Stark's testimony to the effect that Thompson, Evans and Huff were drunk, and that of the employees to the effect that they had had nothing

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[5] In oral argument the Respondent suggested that the quartet were refusing to work in order to compel the Respondent to recognize the Union. If that were so, the employees' action would have constituted a strike. Under ordinary circumstances, various exceptions aside, a strike for recognition is a protected concerted activity, and discharges therefore would constitute unfair labor practices. However, there is no evidence here suggesting such a strike. The Respondent does not contend that it discharged any of the employees for that reason. There is therefore no need to consider that question.

[6] The Respondent's answer, which originally admitted the discharge of Thompson, was amended at the hearing to allege that he quit.

to drink that day, thus collide head-on – the uncorroborated testimony of Stark against the mutually supportive testimony of the 4 employees.

If there was fabrication, it would seem more probable that it was the one, rather than the four, who was lying. It is, of course, possible that the testimony of four can be contrived, and that of one truthful; however the likelihood of perjury or mistake becomes more remote in direct, or even geometrical, proportion to the number of persons who testify to a fact.

Furthermore it is of significance that during the same period of time, two others of the Respondent's witnesses, Karen Gsell and Helga Schenck, had occasion to talk to or to observe one or all of the four. Neither testified that any of them were drunk or gave evidence of drinking. Indeed Helga Schenck specifically disclaimed any such assertion. In these circumstances it appears to me that the objective factors are supportive of my conclusion based on observation of the witnesses, that the testimony of the four employees is to be accepted and that of Harold Stark rejected.

In that connection I have not overlooked the fact that Roger Evans had on an occasion in the past been sent home for drinking and given his job back on condition that he no longer drink on the job. Nor the Respondent's undenied evidence that Huff in the past had been drinking on the job. There is no evidence however that any such, or other, complaint had ever been made concerning Thompson. I have also taken into consideration the fact that Harold Stark had spoken to employees generally, though admittedly to no one in particular, warning them about drinking on the job. I think it not without significance in this respect that when Roger Evans applied for reinstatement on behalf of himself and Thompson he was told by Harold Stark that they had had their "last chance." Clearly Thompson had had no last chance. Nor had Maksymchak. For so far as the contentions and the evidence reveals, Maksymchak had never theretofore given the Respondent any cause for dissatisfaction.

In other instances, related hereafter, I find myself unable to accept the testimony of Harold Stark where denied by other witnesses. On the basis of my judgment as to the credibility of the witnesses, and in the light of the objective circumstances, I am unable to accept Harold Stark's testimony as to the May 11 terminations. I accept as substantially correct the testimony of the General Counsel's witnesses in that respect. To be sure, that testimony sometimes varies as to detail, but such fact, rather than detracting from credibility, appears to refute the suggestion that the stories was contrived or rehearsed.

The discharge of Ortiz

The incident involving the termination of Ortiz is also a credibility problem. The simple factual issue is whether, as Ortiz, Mrs. Peters, and Kenroy Bishop testified, Harold Stark ordered Ortiz to pick up the dog droppings with his hands rather than permitting him to get a broom and shovel, or whether, as Harold Stark and Lawrence Moultrie testified, Ortiz refused to clean out the bushes, claiming that it was not his job.

In view of Ortiz' limited English, and his speech handicap, it might have been possible, but for two facts, to conclude that the whole business involved a simple misunderstanding – on Ortiz' part as to what he understood Harold Stark to be directing him to do, and on Harold Stark's part as to what he understood Ortiz to be refusing to do. However, I deem this is not possible for two reasons, (1), the conflicting testimony of Stark, Moultrie, Mrs. Peters, and Bishop, all literate in English, as to what Stark directed, and (2) the unexplained failure of the Respondent to offer Ortiz his job back. In addition to my conclusion based upon observation of the witness, I deem the latter circumstance of significance in determining the facts of the incident.

If the Respondent's testimony as to the incident is true, the Respondent may have been aware within 5 weeks thereafter that Ortiz had misunderstood what Harold Stark had been directing him to do. For on June 25,

25, 1973, a hearing was held before an unemployment insurance referee of the State of New York on Ortiz' claim for unemployment compensation. The referee found that Ortiz had refused to clean up the front of the building, though provided with equipment such as brooms. pails and shovels. He was therefore denied compensation on the ground that he had refused to carry out the legitimate orders of his employer. Ortiz' testimony before the referee was presumably no different than that before me – if it was intelligible – but the referee accepted the testimony of the Respondent.[7]

In any event, at the instant hearing the Respondent was unquestionably made aware of Ortiz' asserted understanding of Harold Stark's order. The Respondent was thus in a position to clarify the entire episode and perhaps make the issue completely academic by simply offering Ortiz his job back on condition that he clean up the bushes using a broom and shovel. This the Respondent, without explanation, declined to do. I consider that circumstance to be inconsistent with the Respondent's version of the event.[8]

Upon the basis of my observation of the witnesses to the incident who testified before me, I accept and credit the testimony of Kenroy Bishop, Mrs. Peters, and Ortiz as to the circumstances of Ortiz' termination, and reject that of Harold Stark and Moultrie. I deem that conclusion to be reinforced by the objective circumstances.[9]

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[7] Apparently Ortiz testified in English at the unemployment insurance hearing. In view of my experience with Ortiz, I am at a loss to comprehend how he could have been understood in English. Portions of the transcript of that hearing, read into the instant record, are of no significant help on the issues.

[8] At the hearing the Respondent sought to question Ortiz as to whether he wished his job back. Upon objection by the General Counsel I ruled the issue irrelevant unless the Respondent was prepared to offer Ortiz his job. The Respondent's reply was that it was not prepared to make such an offer.

[9] In attacking the credibility of Ortiz the Respondent states that Ortiz' demeanor on the witness stand discloses that when given an order to work he flies off the handle and becomes angry. This is based on an incident which occurred during the hearing. As has been related, communication with Ortiz was difficult. At one point during the hearing,

(continued)

The May 14, 1974 conversation between Fred Stark and George Peters

The facts as to this incident have been given above, pages 7 and 8. Harold Stark denies that his father made the statements attributed to him by Peters, testifying that he was there the entire time. Peters' testimony is that Fred Stark called him aside and spoke to him alone. Fred Stark did not testify. I have previously declined to accept Harold Stark's testimony in connection with the May 11 and the Ortiz discharges. Similarly I am unable to credit his testimony in this instance, particularly in the absence of testimony by Fred Stark. In addition, since Harold Stark's evidence in this regard was mainly negative (that is, a denial that anything occurred), I find it difficult to accept the essential premise that he would remember being on the job site at 145th St. and Jamaica Avenue on May 14, 1973 between 12 and 1 o'clock in the company of his father. Secondly, assuming that he did recall being there on that date and time, it seems even more providential that he would have been able to remember 10 months later that it was "impossible" for his father to have spoken to Peters on that occasion outside Harold Stark's hearing. Indeed, Harold Stark testified that his father did not say anyting to Peters in his presence. Since Peters was the Respondent's foreman on the job, it seems implausible that there would have been no communication between Fred Stark and Peters. These circumstances thus appear to confirm my conclusion, based upon observation and demeanor, that the testimony of Harold Stark is not to

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[9] (Continued) when the interpreter stated that he was unable to comprehend the answer of Ortiz, Ortiz stood up, banged on the witness stand in an apparently angry manner, spoke volubly (apparently in Spanish), made a gesture, and then sat down. The interpreter was able to translate only a portion of Ortiz' statements:

> THE INTERPRETER: Just, I go home, and I think Spanish, English, Spanish, English. That's all I could get. Interpreter, Spanish. I understand -- he's saying the interpreter understands a lot of Spanish."

In my judgment this incident merely reflected the witness' frustration with his inability to communicate.

be credited. I have not overlooked the fact that Peters has had two convictions for felony, pleaded guilty to a misdemeanor (assault), served time in prison, and was also found to have violated his parole. After weighing those circumstances and considering them in connection with my appraisal of the witnesses, and the entire congery of facts, I have concluded that Peters' testimony as to this incident is to be credited.

The discharge of George Peters

Here again, the testimony is solely that of George Peters against that of Harold Stark, and again we have no testimony from Fred Stark, who effectuated the discharge. On the basis of my prior determination as to the respective credibility of the witnesses, and in the light of the entire facts of record, I accept George Peters' testimony in this instance also, and reject that of Harold Stark.

The reasons for the terminations

It has been found that the reasons ascribed by the Respondent for the terminations of the employees are not substantiated by the evidence, and in some instances conflicting. Thompson, Evans and Huff were not drunk or drinking. Maksymchak did not refuse to work. Ortiz did not refuse to clean up the dog droppings with a broom and shovel. Though originally admitting that Thompson was discharged, the Respondent now contends that he quit. And while it now asserts that Peters was discharged for lying, it gave the New York State unemployment compensation authorities a completely different explanation when Peters applied for unemployment compensation. There the Respondent stated that Peters had been discharged for misappropriation of a refrigerator and "misconduct," allegations which those authorities found unsustained.

While Evans and Huff had been previously warned about drinking on the job, and Evans given a "last chance", no such chance was given Thompson, who had never before been involved in any drinking incident. And though

there is no evidence that Maksymchak had ever before given the Respondent cause for dissatisfaction, he was refused reinstatement though repeatedly requesting it. The Respondent, without explanation, declined to offer Ortiz his job back, even though it is apparent, if the Respondent's account of his termination were correct, that there could have been a misunderstanding, which, if the Respondent were acting in good faith, it should have been prepared to, and which it would have been in its interest, to dispel.

Since the reasons advanced by the Respondent for the discharges are thus untrue, what then were the real reasons?

Upon the evidence, the only reasonable conclusion left to be drawn is that the discharges were because of the employees' union activity. It has been seen that within 7 days after the Respondent learned of the Union's claim all but one of the employees who signed union cards were discharged. Apart from inference, there is specific evidence indicative of anti-union motivation. Thus we have Fred Stark's admission to Peters in the May 14 conversation that he had just fired 4 of Peters' men because they had joined the Union, and his statement to Peters in discharging him, that Peters had been told to stay away from the Union but apparently could not "learn." Maksymchak was finally told by Harold Stark that he could have his job back if he got out of the Union. Harold Stark told Kenroy Bishop that the Union was no good, would mess the place up, that all the union men except Bishop had been discharged, and that Bishop should get out of the Union. In these circumstances it must be concluded that the employees were discharged because of their union activity.

The Respondent contends that it had no knowledge of the union activity, Harold Stark testifying, for example, that he was not advised by his father of the receipt of the Union's letter of May 8, until about May 13 or 14. I find the Respondent's contention incredible. There is direct evidence of the Respondent's knowledge in the evidence recited above. Moreover, I deem it

implausible that Fred Stark would not have informed Harold Stark immediately of his receipt of the Union letter. It seems evident that the Respondent had sources of information about employee movements. Thus, apart from the direct evidence recited heretofore, Fred Stark admittedly knew, according to Harold Stark's account, that Peters did not go to the Veterans Administration on May 16. How he knew that is not explained. There is no evidence that Fred Stark asked Peters for an explanation. It thus seems a fair inference, as Peters testified, that Fred Stark knew, not only that Peters had not gone to the Veterans Administration, but that he had gone to the Union instead.

Whether George Peters was a supervisor

The Respondent contends that George Peters was a supervisor. The General Counsel contends the contrary. If Peters was a supervisor, his discharge would not constitute a violation of Section 8(a)(3).

Peters' job title was foreman. His job appears to be property maintenance. He was given his assignments by Fred or Harold Stark each day, and assigned a crew of two or more men, whom Peters would direct. He was not required to sign in mornings, though other employees were. He worked along with the crew. There is no evidence as to his pay.[10] He was also assigned an apartment in which to live, rent and utilities free. Since Peters' discharge the Respondent has not hired or designated a new foreman to replace him. According to Harold Stark, Harold now spends more time on the job, and less in the office, than he did previously.

Peters' employment status with the Respondent being established, the burden is on the Respondent to show supervisory status. *Local 560, Teamsters (Pennsylvania R.R. Co.)*, 127 NLRB 1327, 1330; *Local 636 Plumbers (Detroit Edison Co.)*, 123 NLRB 225, 230-231. The mere possession of the

[10] Harold Stark was unable to supply this information at the hearing.

title "foreman" does not establish supervisory authority. *Local 636, supra.* And that one is "in charge", is also not sufficient. *Local 560, supra.*

The Respondent's evidence as to Peters' supervisory status consists of testimony by Harold Stark and by employee Lawrence Moultrie. Moultrie's evidence is of little probative value. He at first testified in conclusory fashion that Peters had discharged some employees. Further examination revealed that that testimony was based on an incident in which Peters told 2 youths who would not work to "work or go home." The conclusory and unprobative character of Moultrie's testimony is evident from his testimony as to what then happened:

THE WITNESS: They left, they quit, he fired them.

* * * * *

THE WITNESS: No, when I say quit, he fired them.

Then they left. That is what – they quit.

Harold Stark's testimony is that Peters had authority to discharge employees. In addition he testified that Peters once fired three youths who were not working. Specifically, Stark said that 1 to 2 years before, at the end of a work day, Peters told him that the youths were fooling around and were not working and that he had discharged them.

Peters denied firing or recommending the firing of anyone. With respect to the incident concerning the three youths, Peters testified that they did not come back to work after the breaktime at 10 a.m. and that at around 10:30 he called Fred Stark on the telephone and advised him of the fact. At about 11 he again called Stark to say that the youths had not come back. Fred Stark told him that if they returned to send them to the office, which Peters did when they returned around 2 p.m. Fred Stark did not, as we have seen, testify. I have previously credited Peters' testimony in other particulars, and discredited Harold Stark's. In this instance I accept Peters' testimony and reject that of Harold Stark.

I therefore find that the evidence does not establish that George Peters was a supervisor within the meaning of the Act.

General conclusions

On the basis of the foregoing findings I find that the Respondent discharged and failed to reinstate Charles Thompson, Roger Evans, Jeffrey Maksymchak, Wayne Huff, Felipe Ortiz, and George Peters, because they had joined and assisted the Union and engaged in concerted activity for the purpose of collective bargaining and mutual aid and protection. By such conduct the Respondent violated Section 8(a)(1) and (3) of the Act.

It is further found that by interrogating and warning Bishop and Peters concerning union activity, and by telling Maksymchak that he could have his job back if he got out of the Union, the Respondent further violated Section 8(a)(1) of the Act.

IV. The Remedy

Having found that the Respondent had engaged in unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

It will be recommended that the Respondent offer Thompson, Evans, Maksymchak, Huff, Ortiz, and Peters, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and make each of them whole for any loss they may have suffered by reason of the discrimination against them. Such reinstatement shall be effected, and any backpay found to be due shall be computed, in accordance with the Board's usual policies in such cases.

Upon the foregoing findings and conclusions, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[11]

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[11] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Fred Stark, Jamaica 201 St. Corp., Inc., and Jamaica 202 St. Corp., Inc., New York, New York, their partners, officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in Local 32B, Service Employees International Union, AFL-CIO, or any other labor organization, by discharging, refusing to reinstate or to rehire, employees, or by subjecting them to demeaning conditions of employment, or otherwise discriminating against them in any manner with regard to their hire and tenure of employment or any term or condition of employment.

(b) Coercively interrogating employees concerning union activities, sympathies or membership.

(c) Threatening employees with reprisals in employment for adherence to, or support or selection of a union as a bargaining representative.

(d) In any other manner interfering with, restraining or coercing employees in the exercise of their rights to self-organization, to form, join, or assist the above-named labor organization, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Charles Thompson, Roger Evans, Wayne Huff, Jeffrey Maksymchak, Felipe Ortiz, and George Peters, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.

(b) Notify the above-named employees, if presently serving in the Armed Forces of the United States, of their right to full reinstatement upon application in accordance with Selective Service Act and the Universal Military

Training and Service Act, as amended, after discharge from the Armed Services.

(c) Make whole Thompson, Evans, Huff, Maksymchak, Ortiz and Peters for any loss of earnings suffered by reason of the discrimination against them.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay and the rights of reinstatement due under the terms of this Order.

(e) Post at its places of business in New York, New York, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 29 of the National Labor Relations Board, after being duly signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.

Dated at Washington, D.C.

/s/ Charles W. Schneider

Charles W. Schneider
Administrative Law Judge

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[12] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

FORM NLRB-4727
(9-69)

JD-371-74

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT discharge, or refuse to reinstate or rehire employees, or subject them to demeaning conditions of employment, because they join, support, assist, or affiliate with, Local 32B, Service Employees International Union, AFL-CIO, or any other union, or because they sign cards for, or otherwise designate or select such union or any other union as their bargaining representative.

WE WILL NOT question employees about their union activity, affiliations, assistance, or support, or about their selection of the Union or any other union.

WE WILL NOT threaten employees with discharge or other reprisals in employment if they assist, support or join a union, or select a union as their bargaining representative.

WE WILL offer Charles Thompson, Roger Evans, Wayne Huff, Jeffrey Maksymchak, Felipe Ortiz, and George Peters, their jobs back and pay them for any losses sustained as a result of their discharges.

FRED STARK AND JAMAICA 201 ST. CORP., INC. AND JAMAICA 202 ST. CORP., INC.
(Employer)

Dated_____ By_____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 (Tel. No. 212-596-3535.)

[Dated September 6, 1974]

* * * * *

DECISION AND ORDER

On May 31, 1974, Administrative Law Judge Charles W. Schneider issued the attached Decision in this proceeding. Thereafter, Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Baord adopts as its Order the recommended Order of the Administrative Law Judge, as modified, and hereby orders that Respondents, Fred Stark and Jamaica 201 St. Corp., Inc. and Jamaica 202 St. Corp., Inc., New York, New York, their partners, officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as modified below:

1. Substitute the following paragraph for paragraph 2(a):

"(a) Offer Charles Thompson, Roger Evans, Wayne Huff, Jeffrey Maksymchak, Felipe Ortiz, and George Peters immediate and full reinstatement to their

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[1] The Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3). We have carefully examined the record and find no basis for reversing his findings.

former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges."

2. Delete paragraph 2(b) and reletter the subsequent paragraphs accordingly.

3. Substitute the attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C., September 6, 1974.

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT discharge, or refuse to reinstate or rehire employees, or subject them to demeaning conditions of employment, because they join, support, assist, or affiliate with Local 32B, Service Employees International Union, AFL-CIO, or any other union, or because they sign cards for, or otherwise designate or select, such Union or any other union as their bargaining representative.

WE WILL NOT question employees about their union activity, affiliations, assistance, or support, or about their selection of the Union or any other union.

WE WILL NOT threaten employees with discharge or other reprisals in employment if they assist, support, or join a union, or select a union as their bargaining representative.

WE WILL offer Charles Thompson, Roger Evans, Wayne Huff, Jeffrey Maksymchak, Felipe Ortiz, and George Peters immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and we will pay them for any losses sustained as a result of their discharges, with 6-percent interest.

FRED STARK AND JAMAICA 201 ST. CORP., INC. AND JAMAICA 202 ST. CORP., INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212-596-3535.

[Dated July 1, 1974]

* * * * *

EXCEPTIONS BY RESPONDENTS
TO
ADMINISTRATIVE LAW JUDGE'S DECISION

* * * * *

24. Respondents except to the ALJ's statement that if there is fabrication of evidence it is more probable that it was done by one person rather than by 4 persons who testified to the contrary and that the likelihood of lying or making a mistake becomes more remote in direct or even geometrical proportion to the number of persons who testify to a fact. (Decision P. 13, l. 16-22) At the outside of the trial Respondents requested the sequestration

of witnesses especially since it was evident that the events of May 11 concerned 4 employees. It is because the ALJ denied the motion for sequestration that Respondents were prejudiced and were prevented from properly ascertaining on cross examination from each of the four 8(a)(3)s the truth of the events of May 11. It was because the ALJ's denial of the application for sequestration that Respondents were prevented from properly testing the credibility of the said four employees.

* * * * *

GENERAL COUNSEL'S EXHIBIT 1(A)

PHOTO

CHARGE AGAINST EMPLOYER dated 10-18-73

FORM NLRB-501 (2-67)

Form Approved
Budget Bureau No. 64-R001.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-3660

Date Filed 10-18-73

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: FRED STARK

b. Number of Workers Employed: 9

c. Address of Establishment (Street and number, city, State, and ZIP code): 198-10 Jamaica Ave, N.Y. 11432

d. Employer Representative to Contact: FRED STARK

e. Phone No.: HO 5-3600

f. Type of Establishment (Factory, mine, wholesaler, etc.): Building Maintenance

g. Identify Principal Product or Service:

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 3 & 5 (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

1. Between May 11 and May 17, 1973 the employer discharged Wayne Huff, Roger Evans, Jeffrey Maksymchak, Charles Thompson, and George Peters from their employment as maintenance men because of their engagement in union activities, in violation of Sections 8 (a) (1) and (3) of the Act.
2. Beginning on or about May 11, 1973 the Employer refused and continues to refuse to negotiate in good faith with Local 32B despite the fact that Local 32B represents a majority of the employees in the employer's roving maintenance crew, in violation of Section (8) (a) (5) of the Act.
3. Beginning on or about May 11, 1973 the Employer interrogated employees concerning their union activities and one employee namely Kenroy Bishop was requested to discontinue his membership in Local 32B, in violation of Section 8 (a) (1).

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): Local 32B, Service Employees International Union, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code): 1 East 35 Street, New York, New York 10016

4b. Telephone No.: OR 9-1288

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): Service Employees International Union, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By [signature] (Signature of representative or person filing charge)

ATTORNEY (ISRAELSON & STREIT) (Title, if any)

Address 521 Fifth Avenue, New York 687-6660 (Telephone number) October 1, 1973 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 788-671

GENERAL COUNSEL'S EXHIBIT 1(J)

[January 1, 1974]

* * * * *

ANSWER

The Respondents, Fred Stark, Jamaica 201st St. Corp., Inc. and Jamaica 202nd St. Corp., Inc., by their attorneys, Rogers & Wells, for their answer to the complaint herein:

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1, except admit service of the charges referred to therein.

2. Admit the allegations made in paragraph 2 of the complaint.

3. Admit the allegations made in paragraph 3 of the complaint.

4. Admit the allegations made in paragraph 4 of the complaint.

5. Admit the allegations made in paragraph 5 of the complaint.

6. Admit the allegations made in paragraph 6 of the complaint.

7. Deny each and every allegation in paragraph 7 of the complaint, except admit that respondent Fred Stark is a controlling stockholder, officer and director of Respondents Jamaica 201st St. Corp., Inc. and Jamaica 202nd St. Corp., Inc.

8. Admit the allegations made in paragraph 8(a), paragraph 8(b) and paragraph 8(c) of the complaint.

9. Deny that they have any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint.

10. Deny each and every allegation in paragraph 10 of the complaint.

11. Deny each and every allegation in paragraph 11 of the complaint.

12. Admit the allegations made in paragraph 12 of the complaint.

13. Deny each and every allegation made in paragraph 13 of the complaint, except admit that Felipe Ortiz was, prior to May 16, 1973, employed

by Respondents Jamaica 201st St. Corp., Inc. and Jamaica 202nd St. Corp., Inc. building service employee and that he voluntarily quit such employment May 16, 1973.

14. Deny each and every allegation contained in paragraph 14 of the complaint, except admit that on or about May 17, 1973, Respondent Fred Stark discharged George Peters, a supervisor employed by Fred Stark for no other reason than good cause.

15. Admit the allegations made in paragraph 15 of the complaint except deny that Roger Evans, Wayne Huff, Charles Thompson, George Peters and Felipe Ortiz requested reinstatement and further deny that Respondents Jamaica 201st St. Corp., Inc. and Jamaica 202nd St. Corp., Inc. discharged Felipe Ortiz.

16. Deny each and every allegation made in paragraph 16 of the complaint.

17. Deny each and every allegation made in paragraph 17 of the complaint.

18. Deny each and every allegation made in paragraph 18 of the complaint.

19. Deny each and every allegation made in paragraph 19 of the complaint.

And in response to the allegations made in the complaint, Respondents allege as grounds of their defense, as follows:

20. That on or about May 11, 1973 Harold Stark, a supervisor employed by Fred Stark, discharged Roger Evans, Wayne Huff and Charles Thompson for no other reason than good cause: for being intoxicated during working hours and for refusing to work after due warning had previously been given that drinking on the job would result in dismissal.

21. That on or about May 11, 1973 Harold Stark, a supervisor employed by Fred Stark discharged Jeff Maksymchak for no other reason than good cause: for refusing to work.

22. That on or about May 16, 1973, Felipe Ortiz left his employment voluntarily, having previously been employed by Respondents Jamaica 201st St. Corp., Inc. and Jamaica 202nd St. Corp., Inc.

23. That on or about May 17, 1973, Respondent Fred Stark discharged George Peters, a supervisor employed by Fred Stark, for no other reason than good cause; that on or about May 15, 1973, George Peters asked his employer to be given time off from employment to go to the Veteran's Hospital for treatment; that this was a deliberate falsehood; that George Peters had lied to his employer Fred Stark on several previous occasions; and that this incident took place against the background of the employer's discovery, a short time before the dismissal, that George Peters had a very serious criminal record involving crimes of moral turpitude.

24. That in no instance did union activities or affiliations – if there were any – of the persons involved enter into the Respondent's decision to discharge Roger Evans, Wayne Huff, Charles Thompson, Jeff Maksymchak and George Peters, or to accept the resignation of Felipe Ortiz.

25. That at all times material herein, George Peters was in all respects a supervisor and was not an employee within the meaning of the National Labor Relations Act, as amended.

WHEREFORE, the Respondents respectfully request the Regional Director to withdraw the complaint and further request the Administrative Law Judge to reach findings of fact and conclusions of law consistent with the position of the Respondents as stated herein and to dismiss the complaint herein.

ROGERS & WELLS

By: /s/ Richard N. Winfield, Esq., a Member of the Firm

Attorneys for Respondents
Office & P.O. Address
200 Park Avenue
New York, New York 10017
(212) 972-7000

[Certificate of Service]

GENERAL COUNSEL'S EXHIBIT 4

* * * NEW YORK STATE DEPARTMENT OF LABOR * * *
UNEMPLOYMENT INSURANCE REFEREEE SECTION
Two World Trade Center
New York N.Y. 10047

DECISION AND NOTICE OF DECISION

In the Matter of:

George Peters
139-06 34th Road
Flushing, New York 11354

Referee No. 30977-73

S.S.A. No. 116-22-5741

DECISION MAILED AND DULY FILED IN THE DEPARTMENT OF LABOR ON OCTOBER 2, 1973

Local Office No. 541
Department of Labor
42-01 Main Street
Flushing, New York 11355

Fred Stark
198-10 Jamaica Avenue
Hollis, New York

FINDINGS OF FACT: Hearings were held at which claimant, his witness, representatives of the employer and a representative of the Industrial Commissioner appeared. Testimony was taken.

By initial determination effective May 16, 1973 claimant was disqualified because of loss of employment due to misconduct in connection therewith.

Claimant, a superintendent, was employed approximately 20 months to May 17, 1973. Claimant's terminal salary was $170 per week and he worked six days per week from 8:00 a.m. to 4:30 p.m. Claimant was provided with a free apartment, free telephone service and free gas and electricity service by his employer. Several weeks before claimant's services were terminated he joined a union which was attempting to unionize the employees working for his employer. On May 14 claimant was informed by his employer that he

had received notice that the claimant and others were members of the union and he objected to their becoming members of the union. On May 17, 1973 claimant was discharged because the employer claimed that claimant had taken a refrigerator and used it in his apartment without the consent of the employer. The refrigerator was in claimant's apartment for approximately eleven months before his dismissal. He had taken the refrigerator with the consent of his employer because the refrigerator which had been in his apartment had become inoperative.

OPINION: The employer contends that claimant misappropriated property which was owned by the employer. Claimant admitted that he did take a refrigerator which was the property of the owner but only after receiving consent to do so and because the refrigerator in his apartment had become inoperative. It is to be noted that the refrigerator was in the claimant's apartment for eleven months before his discharge. It is also to be noted that claimant's discharge followed shortly after his membership in a union. Upon the credible evidence I hold that claimant did not commit misconduct. I further hold that the termination of his employment was not under disqualifying conditions.

DECISION: The initial determination is overruled.

/s/ DAVID A. SAVAGE
Referee

wew

APPENDIX B

RESPONDENT'S EXHIBIT 7

(SEAL)

NEW YORK STATE DEPARTMENT OF LABOR
Unemployment Insurance Division

NOTICE OF DETERMINATION TO CLAIMANT

Felipe Ortiz

Local Office
Address

[/] Given Date 6/4/73

[ ] Mailed

582121111
S. S. Acct. No.

[Dated March 13, 1974]

No unemployment insurance benefits can be paid to you for the period beginning 5/16/73 until you have subsequently worked for an employer not less than 3 days in each of 4 weeks *or* earned at least $200. Self-employment and earnings from self-employment will not count.

DETERMINATION — You quit your job without good cause.

REASON — This determination is based on the following: You refused to carry out a legitimate request by your employer.

RENEWING YOUR CLAIM — If you are satisfied that this determination is correct, you may apply to renew your claim by reporting to this local office if you are unemployed and believe that you have satisfied the above requirement of subsequent work or earnings.

RIGHT TO A HEARING — IF YOU ARE NOT SATISFIED WITH THIS DETERMINATION, YOU MAY ASK FOR A HEARING BEFORE AN IMPARTIAL REFEREE AT NO COST OR OBLIGATION TO YOU.

REQUEST FOR HEARING — HOWEVER, YOUR REQUEST MUST BE MADE IN PERSON OR BY MAIL AT THIS LOCAL OFFICE NOT LATER THAN 30 DAYS FROM THE DATE OF THIS NOTICE.

When requesting a hearing, be sure to bring your Insurance Book, Calendar Insert and Claim Card, if issued. If you request a hearing by mail, enclose them with your request.

REPORTING — If you ask for a hearing, continue to report to your insurance and employment offices on your assigned days as long as you remain unemployed. This will protect your rights to any benefits you claim.

FOR THE INDUSTRIAL COMMISSIONER

By /s/ [Illegible]

RESPONDENT'S EXHIBIT 8

NEW YORK STATE DEPARTMENT OF LABOR
Unemployment Insurance Referee Section * * *
500 Eighth Avenue
New York, N.Y. 10018

DECISION AND NOTICE OF DECISION

In the Matter of:

FELIPE ORTIZ
525 West 169th Street, Apt. A.
New York, New York 10032

Referee No. 25682-73

S.S.A. No. 582-12-1111

DECISION MAILED AND DULY FILED IN THE

DEPARTMENT OF LABOR
ON July 5, 1973

Local Office No. 512
Department of Labor
559 West 180th Street
New York, New York

Fred Stark
198-10 - Jamaica Avenue
Hollis, New York

FINDINGS OF FACT: A hearing was held at which claimant, a representative of and witness for the employer appeared and testified. A statement was submitted on behalf of the Industrial Commissioner in lieu of an appearance.

By initial determination effective May 17, 1973, claimant was disqualified because of voluntary leaving of employment without good cause.

Claimant, a porter, worked for the employer for approximately four months until May 16, 1973. He worked five and a half days per week at $2 per hour. When he was hired he was told that he would be required to close the hallways, the empty apartments, clean the compactor and keep the front of the building clean and neat. Claimant was repeatedly told that he should clean the sidewalks and remove papers and dog droppings from the sidewalk. He was supplied with the necessary shovels, brooms, mops and pails that he would need to carry out his work assignment. He was repeatedly told that

he was not maintaining the front of the building in a clean manner. On the last day of his employment, the owner told him that he would have to pick up the papers and clean the dog droppings from the bushes and sidewalks. Claimant refused. He told the employer that he would quit his job rather than clean the front of the building, and did leave.

OPINION: The credible evidence establishes that claimant left his employment voluntarily, rather than complying with reasonable orders from the employer. When he was hired he was advised that it would be necessary for him to keep the front of the building in a clean condition. It was the porter's job to maintain the inside and outside of the building. He should or should have known that refusing to keep the front of the building in a clean condition could of such lead to the loss of employment. He was subject to the disqualification.

DECISION: The initial determination is sustained.

/s/ JAMES T. O'DONNELL,
Referee

[Dated March 13, 1974]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
Twenty-Ninth Region

In the Matter of:	
FRED STARK and JAMAICA 201 ST. CORP., INC., and JAMAICA 202 ST. CORP., INC.,	Cases Nos. 29-CA-3600 29-CA-3601
-and-	
LOCAL 32B, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO.	

16 Court Street
Brooklyn, New York
Tues., March 12, 1974

The above-entitled matters came on for hearing, pursuant to notice, at 11:15 o'clock a.m.

BEFORE:

Honorable CHARLES W. SCHNEIDER,
Administrative Law Judge

APPEARANCES:

ELIZABETH K. JOHNSON, Esq.	Brooklyn, New York, appearing on behalf of Counsel for the General Counsel.
CHARLES R. KATZ, Esq.	360 Lexington Avenue, New York, New York 10017, appearing on behalf of the Respondent.

* * * * *

3 PROCEEDINGS

JUDGE SCHNEIDER: Let's go on the record. The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the case of Fred Stark and Jamaica 201 Street Corporation, Inc., et al., Case No. 29-CA-3600, 29-CA-3601.

The Administrative Law Judge is Charles W. Schneider, S-c-h-n-e-i-d-e-r.

I have the following appearances noted:

For the General Counsel, Ms. Elizabeth K. Johnson, Esquire.

For the Respondents, Charles R. Katz, Esquire, 360 Lexington Avenue, New York City 10017.

* * * * *

6 MR. KATZ: We don't need to encumber the record. I am prepared to stipulate to the admission of General Counsel's Exhibit 2 if Ms. Johnson is prepared to stipulate that it was received on May 10, 1973.

MS. JOHNSON: I am prepared to offer the return receipt or to stipulate that you received it on May 10.

JUDGE SCHNEIDER: If there is no dispute over the fact, stipulate it.

MS. JOHNSON: Okay.

* * * * *

7 JUDGE SCHNEIDER: I am advised that counsel have stipulated that General Counsel's Exhibit 2 is received on May 10, 1973.

* * * * *

9 RUDOLPH LARMOND

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

Q. (By Ms. Johnson) Would you state your name and address for the record, please? A. Rudolph Larmond, 921 Washington Avenue, Brooklyn,

10 New York.

Q. Are you currently employed? A. Yes, ma'am.

Q. Would you state your position, please? A. I am the chairman of the Queens County Local 32B.

Q. Could you state the full name of the labor organization? A. Local 32B, Service Employees International Union, AFL-CIO.

Q. I show you General Counsel's Exhibit 2. A. Yes.

* * * * *

11 Q. (By Ms. Johnson) Would you describe what led up to that letter, please? A. Well, I received designation cards from my organizer regarding this – these people.

Of course, we sent letters out to the Employer advising him that we represent his employees.

The letter went out, the letter that was just offered, and a few days later I got a call from Mr. Stark saying that he received this letter with – my name appeared on it, and he wants to know what it's all about.

12 Q. How did you know it was Mr. Stark? A. He called me and he gave me his name; he is Mr. Stark.

I told him that we represent his people and we would like to sit down with him to negotiate a contract.

He told me he doesn't think I have the right party. He doesn't think I have the right people and there must be some mistake. He said, "Who are the people in question?"

I said, "Sir, I am not – I don't have to tell you the names of the people. However, since you are pleading ignorance here, I will mention a few names."

I mentioned two or three names.

He said, "Oh, I fired them. They're all drunk, and I fired them."

I said, "You fired them? Mr. Stark, I don't want to talk to you no more. I will see you downtown at the Board."

And I hung up.

MS. JOHNSON: I have no further questions.

JUDGE SCHNEIDER: Pardon?

MS. JOHNSON: I have no further questions at this time

CROSS-EXAMINATION

Q. (By Mr. Katz) When you received this telephone call from Mr. Stark, these people had already been fired, you said? He told you that?

A. That's what he told me.

* * * * *

13 Q. (By Mr. Katz) I show you Respondent's Exhibit A, and ask you whether this isn't one of the printed types of contracts that Local 32B, the union you are associated with, uses (handing)? A. Yes.

Q. Would you turn to the last page, while you are holding the document, sir?

Do you recognize the signature of the official of Local 32B?

A. Yes.

Q. Isn't it a fact, sir, that since April 1973 Local 32B has had contractual relations with Arlington Village, Inc., at the four building listed in Respondent's Exhibit A?

MS. JOHNSON: Objection, Your Honor.

The document will speak for itself, * * *

* * * * *

JUDGE SCHNEIDER: If there is no dispute and it's material, you can offer it into evidence as part of your case.

MR. KATZ: All right.

14 May I offer it into evidence?

* * * * *

JUDGE SCHNEIDER: All right.

Now, what's the relevance of this, Mr. Stark – I'm sorry, Mr. Katz?

MR. KATZ: The relevance is it's one factor to be taken into consideration in determining alleged anti-union discrimination where an employer – this

is the same employer – is under contract with the very union charging him with discrimination, and that it's had peaceful relations with.

JUDGE SCHNEIDER: It bears on Respondent's motivation?

MR. KATZ: Yes.

JUDGE SCHNEIDER: I see. Very well.

15 I take it there is no objection?

MS. JOHNSON: No objection.

JUDGE SCHNEIDER: Admitted.

(The document above referred to, heretofore marked Respondent's Exhibit No. A, was received in evidence.)

* * * * *

16 MR. KATZ: I don't think it's necessary to encumber the record with the document.

In an off-the-record discussion counsel are prepared to stipulate, by letter date January 21, 1974, the Twenty-Ninth Region of the National Labor Relations Board dismissed the 8(a)5 portion of the Charging Party's charges on the ground that in fact Local 32B did not represent a majority of the employees.

Respondent so stipulates.

MS. JOHNSON: I am prepared to so stipulate.

JUDGE SCHNEIDER: The stipulation is received.

Q. (By Mr. Katz) Now, this conversation which you said you had on the telephone with Mr. Stark, to the best of your knowledge, can you fix a date? A. No, I can't fix the date. A few days later.

Q. Can you fix a time of day? A. Approximately around 10:00

17 o'clock in the morning, approximately.

Q. But you are clear that it was Mr. Stark who responded to your letter? He called you? A. Mr. – he was on the telephone. I couldn't see him.

Q. I'm sorry. Maybe – I will rephrase the question. That isn't – maybe my question isn't clear to you.

You didn't initiate a call to him? A. No.

Q. He initiated the call to you – A. Right.

Q. – replying to your letter – A. Right.

Q. – which is in evidence? A. Right.

* * * * *

18 CHARLES THOMPSON

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Ms. Johnson) Would you please state your name and address for the record? A. Charles Thompson. I live at 55-15 99th Street, Rego Park.

Q. Are you currently employed? A. Yes – I mean, I am currently employed at the present time. I have been employed for a couple of weeks.

* * * * *

Q. (By Ms. Johnson) Where are you employed now? A. Well, I have been driving a little bit, most of the time for Castro Convertible.

Q. You started that, did you say, about two weeks ago? A. I'd

19 estimate three weeks ago, because I don't know exactly.

Q. Were you previously employed by Fred Stark at 198-10 Jamaica Avenue? A. I was.

Q. What was your position? A. Well, I would call it a handyman or truck driver, or whatever you want to call it. I did so many things I really don't know.

Q. When did you start working for Mr. Stark? A. I'd say it was in May of '72, somewhere along about the last –

Q. Who gave you your work assignments? A. Well, sometimes

Harold would give me my assignment, sometimes his father.

Q. Harold who? A. Harold Stark.

Q. Was your work ever criticized? A. Not as far as I know.

JUDGE SCHNEIDER: The answer is no?

THE WITNESS: No.

Q. In the spring of 1973, was there a union organizing drive among the employees? A. Yes, there was.

Q. How did it come about? A. Well, me and some of the fellows got together – you know, we talked about it, and we decided that we wanted it.

So, one day, along about the last of April, so we all got together and called up Mr. Tony – I can't pronounce his last name too good – Appucio; and –

JUDGE SCHNEIDER: Spell it.

Q. Did you have a meeting, did you say?

MR. KATZ: Can we have –

JUDGE SCHNEIDER: Can we have the spelling of that?

MS. JOHNSON: P-o-c-c-i-o.

JUDGE SCHNEIDER: Thank you.

A. It wasn't what you would call a meeting, you know, it wasn't what you call a meeting. We all got together and went down.

Q. Who is the "we"? A. Me, George Petersen.

JUDGE SCHNEIDER: George who?

THE WITNESS: Mr. George Peterson.

A. (continuing) Philip Ortiz.

JUDGE SCHNEIDER: What was that name?

THE WITNESS: Philip.

MS. JOHNSON: Philip Ortiz.

JUDGE SCHNEIDER: Pardon?

MS. JOHNSON: Philip Ortiz, O-r-t-i-z.

A (continuing) And Roger Evans and Kenroy Bishop.

HEARING OFFICER: Bishop?

THE WITNESS: Right.

Q. Do you remember any other men that were there? A. And Wayne Huff.

HEARING OFFICER: Wayne Who?

THE WITNESS: Huff.

MS. JOHNSON: Huff, H-u-f-f.

A. And Jeffrey Maksymchak.

Q. Do you remember when you got together? A. When we got together?

Q. Yes. A. It was on the 30th of – along about the 30th of April when this had taken place.

Q. When was it, after work? A. It was after work, yes. It was on our own time.

Q. And you had a meeting? A. Yes, we had a meeting.

Q. What happened at the meeting? A. Well, Mr. Tony, he came in, we all got together, so we sat down and he explained to us, you know –

* * * * *

A. So we all got together, he explained to us what could happen if we go through with it.

So we all agreed, and said well, what happens, happens. That is what we want and we will sign up for the union.

Q. So you signed a card? A. He gave us all cards, we signed our name, address, and birth and everything on it and gave it back to him.

MS. JOHNSON: I would like to have this marked for identification as General Counsel's Exhibit 3.

(Above-referred to document was marked General Counsel's Exhibit 3 for identification.)

MR. KATZ: Do you want to show it to him, if he says he signed it –

MS. JOHNSON: Okay.

Q. I show you this card. Is that your signature on it? A. Yes.

Q. Is that your signature – A. Yes.

Q. – in both places? A. Right.

MS. JOHNSON: At this time I would like to offer into evidence General Counsel's Exhibit 3.

HEARING OFFICER: Admitted.

(Document previously marked General Counsel's Exhibit 3 was received in evidence.)

23 HEARING OFFICER: I note that the card is undated.

MS. JOHNSON: Right.

Q. Mr. Thompson –

MR. KATZ: Hold it.

Q. – what was going to happen after the meeting, as far as you know?

A. What was going to happen after the meeting – after we all signed the cards and everything?

Q. Yes. A. Well, we did not know exactly what would happen. We just went along, you know, and so we had a good idea what might happen when he found out we signed for a union, because he explained to us that we probably would get fired.

Q. Who told you that?

MR. KATZ: Who explained?

I am sorry.

Q. Who told you that?

MR. KATZ: Can we have who is the "he"?

A. Mr. Poccio, Tony. He explained it, he sat down and explained the whole thing.

Q. And then what happened next? A. So, he said we will hear from

him later. Some of us went one way and some went the other way.

I went outside and got in the car with my wife and drove off.

24 Q. What happened after that? A. The next day I went back to the work.

Q. You continued on working? A. Right.

Q. Then what happened? A. Along about the eleventh of May he sent me out on a job –

Q. What was the job? A. Check up a building, check out a basement.

HEARING OFFICER: Who is he?

Q. Who is he? A. Harold Stark.

Q. Who went with you? A. Me and Roger Evans and Wayne Huff.

Q. Where did you go? A. We went to Farmers Boulevard, to a building he had over there and we went to work in it and we went to clean it out.

So we started to clean it out. So I went to work. So one of his other men came by and told me to go help him nail up some stuff on a window, some boards.

Q. This is another employee of Mr. Stark? A. Another employee, yes.

Q. What was his name? A. Mr. Mutree.

25 And so I went along with him like he said because there was nothing unusual any way for a guy to come by and give him some help. I feel it is all right.

Harold comes by looking for me after I went up there. He come asking Mutree why I am there.

He said he came up here to help me.

MR. KATZ: Has the witness fixed the date for –

HEARING OFFICER: May 11th.

THE WITNESS: This happened about 11:30.

I went back down to the building with me. He showed me again what to do and the building was to be cleaned up, all this stuff out of the basement.

Me and Roger, we started to working because we already got all the small stuff like a bunch of wooden stuff, like what we could carry, and then we got down to the heavy stuff.

I told him, I said now we need some help. That is a little too rough for three men to carry the stuff that far, approximately to the other side of the building and you can't – a ten gallon pail full of coal, it gets kind of heavy after a while.

I figured we need more help. I went to the office and asked for Harold. I wanted to find out where Harold was.

26 She said –

Q. Do you know who you talked to in the office? A. I think I talked to – let's see, a young lady who worked in there.

I think her name was – What was her name?

Q. One of the secretaries in the office? A. Yes, she was a young girl. I can not remember her name.

Anyway, I said I want to know – Nobody know where Harold was.

I said I will wait outside.

I went outside to sit in the truck a while.

In a few minutes, Jeffrey Maksymchak pulls up in the truck. He goes in the office and asked – he said he did not feel too good. He was not going to work.

Harold came, we were all sitting in the station wagon –

Q. Did Jeff get in the car with you? A. No, we get in his car, in his station wagon because we all were in the truck and –

Q. Who else was there? A. What?

Q. You were there and who else? A. Me, Wayne Huff, and Roger Evans was there at this time.

27 So in a little while, about an hour, half hour – from an hour to a half hour, Harold he pulled up, he got out of his car and came over to the car, looked in the car, he said to Jeffrey – Jeffrey, no work today?

He said no sir, I do not feel good and he looked again.

He said well, your fired. You are fired, and you have been drinking and–

This is the way it went. He said you are drunk –

HEARING OFFICER: Who?

A. – you are drunk.

HEARING OFFICER: Who is drunk?

THE WITNESS: All four. Me, Roger Evans, Wayne Huff, and him.

I had been drinking. He did not say I was drunk. He said you have been drinking. He said you are fired.

As a matter of fact, all four of us were fired at that time right there.

He said come back later and get your pay.

So nobody give him no argument because he did not give us time to give him an argument. He turned around and walked off. We did not give him an argument. We drove off.

About 4:30 we went back to get paid. He said here is your money; again, you are fired. Get off the place; do not come back on the property.

28 So I have not been back from that day to this.

Q. Were you drinking that day? A. No, I was not.

Q. Did you refuse to work that day? A. No, I did not.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Katz) Mr. Thompson, prior to May 11th, 1973, had you ever been sent home for being drunk in all the time you worked for the Stark–

29 A. No.

Q. – organization. A. No, I have never been sent home for being drunk.

Q. Never been sent home? A. No.

Q. Prior to May 11th, 1973, were you ever reprimanded by anybody in the Stark Organization for drinking? A. Yes. Many times I would be drinking on the job, but his son Harold would say do not drink on the job.

He did not necessarily have to be talking to me and I hear him say that.

He never caught me drunk, not the first time.

Q. Now, prior to May 11th, 1973, when was the next date –

In other words, how many days or weeks or what is it before May 11th, 1973, that Harold Stark had talked to you about your drinking? A. Had talked to me or talked to everybody in the place?

Q. Now, first let's talk about you. A. Me?

Q. Yes. A. He never come directly to me and told me no drinking on the job.

Q. Did there come a time when Harold called a meeting of all the men about the drinking? A. I never know him to just come up and call a meeting.

I know him to walk in in the morning and we all be standing in the shop, and he say you all have to stop this drinking on the job.

Q. Didn't this happen in April of 1973, that Harold – the beginning of the day when everybody was in the place before going out on their jobs–

A. I could not say yes or no, because he said it a million times.

I could not say yes or no was it April or May or when it was.

It could have been then.

Q. He said it many times? A. He said it many times. He did not necessarily be talking to one particular person.

Q. He was talking to all of the employees? A. He was talking to all of the employees.

Q. You were one of the employees that was there, right? A. I was one of the employees that was there. That is correct.

But that did not mean that I was drunk.

Q. Did you ever speak to Fred Stark or Harold Stark about a union?

31 A. About a union, did I ever speak to anyone of them?

Q. Yes. A. No.

Q. Did they ever ask you about a union in your presence? A. No.

Q. All right. Now, on this day of May 11th – I will withdraw that.

Isn't it the regular and usual practice for the men to report one place in the morning and then they are assigned out for a days work? A. At one place, correct.

Q. Where is this place that the men meet each morning to receive their assignments for work? A. 198-10 Jamaica Avenue.

HEARING OFFICER: What is that address?

THE WITNESS: 198-10 Jamaica Avenue.

Q. And about what time in the morning do the men congregate?

A. Anywhere from 20 minutes to 8 until 10 minutes after eight, or whenever they all get there.

If they was all there before eight, they get together before eight.

Q. Now on May 11th, 1973, you were there with the other men –

32 A. Right.

Q. – waiting for assignments? A. Right.

Q. Did Harold Stark give you an assignment? A. True.

Q. Where did Harold Stark tell you to go to work? A. He told me to go to Farmers Boulevard.

I had some stuff to take over by the Mercer building which maybe he did not know about it, and throw it off the truck and to over there.

Q. Anybody else assigned to go with you? A. Me and Roger Evans and Wayne Huff.

Q. And did Harold Stark tell you what to do that day? A. That is right.

Q. You tell us as best as you can recall what work he told you to do.
A. He told me to do?

Q. Yes. A. Okay.

He says to over and get that building cleaned up, the basement and top floor, like the ground floor.

So we had been working in there. There were a lot of broken up wood in there.

We went to work and got all the light stuff off the floor we was working
33 on. A whole lot of stuff fell down into the basement because they had a big hole cut in the floor, and so it goes down there and they had a whole lot of coal, cinders, and stuff, that was – just before I went down there, this Mutree fellow came by –

Q. About what time was that this Mutree came by? A. It had to be about a quarter past eleven, because in a few minutes it was 12:00 o'clock after I went up there and helped him and came back down there.

Q. You say a lot of stuff fell through the whole into the basement?
A. Wooden stuff, but it was more than that in there.

They had a whole lot of coal and a whole lot of wet ashes – There was a whole lot of garbage down there.

Q. Continue.

What did you do? A. Well, we started to clean and it was pretty hot there, so I talked to those two guys, like, I told them –

I said, look, here we are going to need some help. You all agree?

We will go to the office, see if we can not get some help.

So, I get in the truck, all three of us, and we drove to the office.
34 I walked in the office. I asked anybody where Harold was or where the boss was working at.

Q. And what time was this when you came back to the office?

A. It was about 12:30 – 12:30, quarter to one I would say when I got over to the office, and we stay in the office until Harold came.

After I went in the office, I went back and sat in the truck.

So when Harold came back and he came up to the car where we were sitting –

Q. About what time did Harold come up to the car where you were sitting? A. We stayed there about an hour maybe; maybe a little better than an hour; maybe less than an hour.

We were not too long.

Q. You sat in the – A. Jeffrey Maksymchak's car which he had a station wagon.

Q. You sat in the truck? A. We sit in the truck until Jeffrey came up.

We got out of the truck and got right in the car because he was parked right in the front of the truck.

He said he did not feel like working, he wasn't working, so we sit there with him until Harold came.

35 Q. What did Jeffrey say? A. He did not feel like working.

Q. Well, about what time of day did Jeffrey – I will withdraw that.

Jeffrey is a student that goes to school, isn't that correct?

A. Yes.

Q. He does not come to work until around one o'clock, isn't that true?

A. Sometimes around one, sometimes it is later.

Actually, the time he got out of school. There wasn't no certain time he come.

He might come at one; he might come at 12; he might come at 3.

Q. You said Jeffrey said that he was sick? A. No, he did not say sick. He said he did not feel like it.

Q. Didn't feel like what? A. Didn't feel like working.

Q. He didn't feel like working that day? A. Right.

Q. Did Harold Stark ask Jeffrey whether he was going to work that day? A. When he came up to the car, yes he did ask him.

Q. And Jeffrey said he doesn't feel like working that day? A. That
36 is all he said. He did not say another word.

Q. Then what did Harold say to him? A. He looked at him and said you are drunk; looked over to Wayne and said you are drunk; looked at me said you have been drinking.

He said you are all fired.

Q. Were any of you sleeping or had your eyes closed while you were sitting in the motor vehicle? A. Nobody was sleeping.

Q. Did any of you have your eyes closed while you were in the motor vehicle waiting for Harold Stark to come? A. Not as far as I know.

Q. You saw the other fellows there, they were with you? A. Not as far as I know. Nobody was sleeping. Nobody had their eyes closed.

Q. What time is your lunch hour generally? A. Well, 12:00 o'clock.

Q. From 12 to 12:30? A. Right.

Q. Did you have lunch that day? A. Sure.

Q. And it was after lunch that you went back to the office –
37 A. It was after lunch.

Q. – to wait for Harold? A. Right.

Q. I show you General Counsel's Exhibit 3 and ask you to please tell me to the best of your recollection the date on which you signed it.

(Mr. Katz handed a document to the witness.)

A. The date is not on here. It is not May 11th.

Q. I know. That is why I asked you. A. I mean not April. Not April – long about the third of April.

It is not on here.

Q. Around the third of April? A. Thirtieth of April; somewhere around the 30th of April. The 30th or 29th. I just remembered.

Q. And where were you when you signed it? A. I was at Mr. George Peterson's house.

Q. And there were a group of other fellows there? A. True.

HEARING OFFICER: What was the last name?

George who?

THE WITNESS: Mr. George Peterson.

HEARING OFFICER: Peterson?

THE WITNESS: Yes.

38 Q. How did you get the telephone number of Local 32B? A. How did I get it?

Q. Yes. A. Well, I know a man that had the phone number.

Q. Did you give it to any of the other workers in the place? A. I think I gave it to Mr. Peterson. I would not say yes and I would not say no, but I told him about it, but I do not know whether I gave him that phone number or not because he could have gotten it his own self if he wanted it.

Q. Did you tell George Peterson that the meeting with the union on April 30th was going to be held in your apartment? A. In my apartment?

Q. Yes. A. No.

MR. KATZ: May we have this statement, the affidavit of Mr. Peterson– of Mr. Thompson dated November 1st, 1973, marked Respondent's Exhibit B for identification?

(Above-referred to document was marked Respondent's Exhibit B for identification.)

HEARING OFFICER: What is the date on that affidavit, Mr. Katz?

MR. KATZ: November 1, 1973.

39 HEARING OFFICER: Thank you.

Q. (By Mr. Katz) Mr. Thompson, would you look at Respondent's Exhibit B for identification and–

HEARING OFFICER: Identify that as 2, Respondent's Exhibit 2, please. I prefer it in numerical order.

(Document previously marked Respondents Exhibit B was remarked Respondent's Exhibit 2.)

Q. I show you the last page and ask you whether that is your signature on it. A. Yes, it is.

Q. Did you read the statement before you signed it? A. Yes, I read it and I got the statement at home, too.

I have the whole thing at home.

Q. But did you read it before you signed it? A. Yes, the lawyer went – she went over it with me.

Q. I call to your attention on page two the paragraph that begins on or about April 30th, 1973, that full paragraph.

Would you just read it to yourself?

(Mr. Katz handed a document to the witness.)

Q. Let me know when you are finished reading it. A. All right.

There is a mistake.

40 Q. What is the mistake, sir? A. If I said that I told Mr. Peterson that he was going to hold a meeting at my house, that was a mistake.

Q. But you read this before you signed it? A. Yes, I did.

Q. And did Ms. Johnson ask you to swear to the truth of it before you signed it? A. No. Ms. Johnson, she wasn't the lady that –

Q. I am sorry. The Board agent. I stand corrected.

Did he ask you to swear to it before you signed it? A. She did.

Q. Now, again returning to April 30th, 1973, I think you testified you told some of the employees about the meeting that was going to be held?

A. I told some of them?

Q. Yes. A. Yes, I told some of them and Mr. Peters he told some of them also.

Q. About how many did you tell? A. Three or four of them. I might have told more, but we all was there.

Q. Now, on this occasion, on the day of April 30th, when you spoke to the number of people that you say you did, isn't it a fact that none of the Starks were there?

41 They were not present when you were talking – A. No.

Q. – about the union? A. You mean Mr. Stark or his son Harold?

Q. Well, there is a Fred Stark, isn't there? A. And there is a Harold Stark.

Q. And Harold Stark. A. Yes.

Q. When I use the phrase Starks, do you know who I mean? A. I figured you said his son or his daughter or his wife.

I do not think you said his employees.

Q. Were the Starks present on April 30th when you said you told some of the employees about there is going to be a meeting that night? A. No, and I did not tell them there would be a meeting at night.

I said we are going to Mr. Peter's house after work and we suppose to meet Tony Poccio up there to sign up for the union.

So we will all get together after work and so we went up there.

But as far as anybody else, you are referring to Mr. Stark, there was none of them there, no one but those who are sitting in the corner now, all of them

42 who are sitting in the corner was there.

HEARING OFFICER: Who are you identifying.

THE WITNESS: I am identifying Mr. George Peters, Ortiz, Roger Evans, Wayne Huff, Kenroy Bishop, Jeffey Maksymchak.

Q. Maybe my question is not clear. Let me try and rephrase it.

I am not talking to you about what took place when you fellows got together after work on April 30th and discussed the union.

What I am asking you, sir, is this: before you had the talk amongst

yourselves, you told us that you told some of the employees that they were going to get together later about the union on April 30th; is that right?

A. Some of them, yes.

Q. All right. Isn't it also true that the Starks were not there when you talked about the union to these people on April 30th? A. No, there was no Starks there.

Q. Was there any discussion at the time you say you signed the card, whether the card should be dated or not dated? A. No, there was no discussion about it.

Q. No talking about it, about filling in a date or leaving the date out?

43 A. No. There was nothing said as far as I know about it; there was nothing said to me about it.

All I know is that when we signed these cards, filled these cards out, we would hear from him.

Q. That is what the union official told you? You would hear from him?

A. Right, we did not see these cards any more until we went to court.

As far as discussing these cards, we did not see them until we went to court.

Q. When you went to this job on May 11th on Farmers Boulevard, it was Harold Stark who told you who else was to go do the job there?

A. Was he there?

Q. No. A. No, he was not there when we first got there.

Q. No, no. A. He came a few minutes later.

Q. At their place on 198th Street, when you came in on the morning as you told us was the regular practice – A. Right.

Q. – Harold Stark told you and who else was to go with you to do the work; is that right? A. That is right.

44 Q. What time did you leave the place that day to go to the job on Farmers Boulevard? A. I did not go directly from the place to the job

on Farmers Boulevard.

I went to some place else because I had some stuff on the truck that he told me to drop off here on Sutphin which is a building called the Mercer building.

Q. Who else went with you when you did not go to the Farmers Boulevard job directly? A. Me, Wayne Huff and Roger Evans.

Q. Where do you say you went before that job? A. I – building right off Sutphin Boulevard called the Mercer building.

It is a big building. Sometimes we take stuff over there and drop it off, leave it and go to other places.

Q. About what time did you arrive at the job on Farmers Boulevard?

A. About what time?

Q. Yes, around what time? A. Well, I did not time myself.

I would say it had to be around nine, maybe before, a little after.

As far as I know I wasn't checking on the time.

Q. And the stuff that you had to drop off on this other job you say–

45 A. It was not a job. It was a building.

Q. What did you have to drop off? A. We had some garbage, take garbage, put in the back, and take a load of it and then haul it off, which this here wasn't garbage, it was some iron on there, so it would not fly away.

Q. When you left 198th Street, you say you made a stop before you went to Farmers Boulevard? A. Correct.

Q. What kind of motor vehicle were you driving at the time?

A. A Ford dump truck.

Q. Did you have anything in the dump truck that you had to deliver some place? A. No, no. It was irons, stuff on – it was already on the truck where I picked up somewhere – one of the other drivers picked up and he wanted to take it over –

Q. Describe as best you can what this iron looked like. A. Just junk.

Q. How much was it? A. It wasn't that much. Maybe two or three hundred pounds or more.

Took it over there, backed up to the door and took it off and left it there and went to Farmers Boulevard.

46 Q. Are you telling us that Harold told you and the other two fellows that went with you to take this iron in that truck and drop it off at a stop before you went to Farmers Boulevard on May 11th, 1973? A. That is true.

Q. You are saying Harold Stark told you that? A. That is true.

Q. Now, you testified that a fellow by the name of Mutsy –

A. Mutree.

Q. Do you know what his first name is? A. I think it is Luther.

Q. Is he in the room here?

Can we get him identified? A. No, he is not in the room.

Q. Does he do the same kind of work that you do? A. Not necessarily, no. He drives a truck, yes.

Q. Is he your supervisor? A. No.

Q. Did he not come to your job where you were working? A. He came to me on Farmers Boulevard. He came to the front of the building.

47 Q. What time was that? A. That was a little before – around 11:00 o'clock, maybe a quarter after eleven because when he came I went up there where he was nailing up windows, kids knocked out the windows.

I went up there a few minutes before Harold came up and told me to go back down there and finish cleaning the basement in the building.

Q. Harold told you to go back to the job on Farmers Boulevard?

A. Down the street, half a block from where I was at which he has another building there and they have another building just above that.

Q. They have a lot of buildings in the neighborhood; is that right?

A. A whole lot of them.

Q. A whole lot of them? A. Yes.

Q. Did Harold go looking for you and find out why you were not at the place where you were supposed to clean up with the other fellows?

MS. JOHNSON: Objection.

A. If you want to call it looking for me.

Q. Didn't he say something to you? He said why did you go off that job? A. Why did I go off the job? Yes, he asked me and I told him.

48 Q. Didn't he say to you it was your job to stay there and clean up like I told you in the morning? A. He said what are you doing up here.

I said Mutree came by and said you said for one of us to go up there and help him to nail this window, which is nothing unusual, because –

Some of the guys on the job always come by if you had been working in the place. Harold said get so and so to help you.

They helped me every day somewhere around the job.

Q. You mean you have been transferred from job to job every day?

A. That is true. You liable to start working here and wind up in Far Rockaway or Brooklyn.

There was nothing unusual about that.

Q. When you left the job that you were told to clean up, on what avenue was the other place you went to about nailing up the window?

A. It was right up the street. It was not an avenue. It was just about a half block.

He has one building, if you are going up Farmers Boulevard – as a matter of fact he has two on the other side, and he has one on the left side, which

49 is a cross on the other side of the street, but it is on the same street on Farmers Boulevard.

That is about as far as I went, about half a block and went right back when he told me.

Q. Let me show you again Respondent's Exhibit B, your affidavit, sir,

and call your attention to page five and direct you to that part where you say I left with Mutree. Mutree and I went to a store on about 115th Avenue and we started to fix a window. A. Well –

Q. Is that the job you are talking about? A. That is the job. It is about half block from where we was working at.

Q. Now, there came a time, didn't there, when Harold Stark appeared at this place where you and Mutree were? A. He did come up there.

Q. What did Harold say to you? A. Well, first he said what you doing up here, I left you down there to do work.

I said Multree stopped by here and said you said for one of us to come on up there and help up to nail up the windows.

I went to work and helped Mutree.

50 When Harold came back and he told me to go back down. I quit. I did not give him an argument about it.

Q. Didn't Harold say you had no business being there? A. If he did, I do not remember. He didn't say too much to me about it.

Why would he tell me to get back down and to what I was doing?

Q. Didn't he say you had no right to be at that other job? A. No, he did not say that. I do not see how he could say I had no right to be at the other job.

It is like I said, it was not anything unusual, one of the men's coming to me telling me to go to another job saying Harold told me to do it or Mr. Stark told me to do it, because I was working on the Farmers Boulevard and wind up on Hollis Avenue or wind up at the Mercer building.

That wasn't unusual.

Q. You can have ten jobs a day; is that right? A. Right.

Q. Harold would be the one to tell you? A. No, he would send a man to tell you.

He would send any man to tell you he said so and so, not necessarily he

came up and tell you.

51 Q. But in this instance, you say Mutree told you that Harold told you? A. Harold said for me or one of us to go up there with him.

Q. And Harold said what are you doing here? A. What am I doing here?

Q. Isn't that what he, Harold, said? A. Maybe he did, maybe he did not. I do not know.

Q. Let me show you again your affidavit, Respondent's Exhibit 2, again referring you to page five, and ask you whether it is not the fact that Harold said to you what I – what was I doing there. That means you.

Didn't Harold say that to you? A. What was I doing there?

Q. Yes. A. Probable he did and I told him what I was doing there.

Q. Before you tell me what he told you, isn't it a fact he asked you what you were doing there? A. I could say yes and I could say no.

Q. But in this affidavit you said yes positively, didn't you? A. I must have. It is there.

HEARING OFFICER: Said yes to what?

MR. KATZ: That Harold asked him what he was doing there.

52 HEARING OFFICER: I see.

THE WITNESS: He asked me what I was doing there.

I told him what I was doing there.

Q. Now, did Harold then go to the job where you and the other fellows were cleaning up? A. He came right on back up the street behind me.

Q. Did he tell you what to do with respect to cleaning up on that job? A. Did he tell me what to do?

Q. Yes. A. Me and him – he even went in the basement with me.

Q. What did he tell you you should do there? A. To clean the garbage out of the basement.

We cleaned the top floor up, and they had a little bit of wood and stuff down in the bottom there, all of it had never been got out; most of that was down there, it was coal.

He said I want this coal and cinders, all the stuff, out of this basement.

Q. He told you he wanted the coal out of the basement? A. The coal, the cinders, and everything. He said he wants everything out of that basement.

Q. Is there a burner there for the coal to be used in connection with
53 the premises? A. There was a burner there, yes. There was a boiler, an old coal burner down there.

Q. And Harold asked you to take the coal out of there? A. That is right.

Q. Did you say anything to him about it? A. No, because we was going to try and get it out until we discovered that it was too much work for us to carry out that coal all the way from the front back there to the truck and then we did not have no help.

Q. Didn't you have shovels and pails and buckets as part of your regular tools that you used in the kind of cleaning up work that you did?
A. It is true. We had some shovels and pails, but we also when we go to take ashes and cinders and stuff out of the basement like that we also had five or six men to help us, not no three men to try and carry it out of the basement and carry it and dump it on the truck.

We were carrying it up flights of steps into the truck.

Q. What type of container did you use to carry it upstairs?
A. Some were five; some were ten gallons.

Q. How many men does it take to lift five or ten gallons? A. A
54 container?

Q. Yes. A. One man.

Q. One man? A. One man can lift one.

Q. So you could have lifted it yourself, couldn't you? A. Lift it myself?

It had to be a man on the truck. I was lifting it; had to reach down and – it is too heavy to get all the way up. I reach all the way down to get it and dump it on the truck.

Q. You stayed on the truck? A. I was on the truck dumping the pails, yes.

I was on the truck.

Q. In other words, the other men that were on the job with you, they were the ones that would bring you the containers, you stayed on the truck is that correct? A. Yes.

Q. You dumped the stuff out in the truck? A. Yes.

Q. You gave them back the empty container? A. One man went all the way down into the basement. Had one standing on the steps, because he bring it to the steps and hand it up the steps to the other man. The
55 other man would bring it and hand it up to the truck to me which I dumped and give the pail back to the man.

Q. Now, this procedure of one man standing on the truck –

A. Right.

Q. – one man on the truck and one in the place that had to be cleaned–

A. One man was in the basement.

Q. Yes.

That is the usual procedure – A. That is the usual procedure.

Q. – for picking up junk, dirt, whatever you have to take out?

A. Right, but not with three mens; not carrying that far.

Q. Pardon me. A. Not with three men and you have to carry it from the front of the building all the way to the back to the truck.

Ordinarily you have a chain of men, do you understand what I mean, you have a chain of men, a man here, a man there, and a man over there, like

five or six mens which the man down here is shoveling the stuff didn't have to pick it up and bring it out of that basement, because there had to be a
56 man on that truck to dump it.

Q. Let me take you back a little bit, Mr. Thompson.

That morning you did start cleaning work on the Farmers Boulevard job; is that right? A. That is true.

Q. You then said there came a time when another worker asked you to go help him nail up a window some place; right? A. Yes, but not necessarily be a worker to help nail up the window.

I said he would come and tell you Harold said go do such and such or go to another building or go to another job.

Q. You went to the other building? A. I went to the other building with Mutree.

Q. Before you went to the building with Mutree, you fellows that were on the Farmers Boulevard clean up job were cleaning up; isn't that right? A. That is true.

Q. You had one man in the basement, one man upstairs, and you were on the truck; is that right? A. At that time there wasn't anybody in the basement, when Mutree came out because we had not got down to the basement.

We were taking out the wood out of the building; all the wood on the
57 ground and that was there before we went into the basement before.

We did not go to the basement until Multree came down to help him nail up the window.

That is when we went in the basement to help clean it up.

Q. When you started the job you knew you had to go into the basement; Harold told you to clean up the basement? A. He said also clean the basement out.

I did not think he wanted the coal and cinders, because when we were

unloading wood and stuff, that was tore up in there, because –

Q. When do you say it was the first time that it came to your attention that Harold wanted you to take the coal out of the basement?

A. After he came over there – backover there, when he caught me up there helping Mutree.

He said I want you to get the coal and all that wooden stuff out of there.

That is when he told me.

Me and the guys tried to get the coal and stuff out of the basement.

We discovered we were not doing any good, three men, to lug that coal as far as we had to carry it out there to the truck.

58 Q. Had you said anything to Harold about it? A. I had not seen Harold.

That was the reason for me to go to the office and ask him could I get another couple of men and he was not there and nobody seemed to be aware of where he was at.

I said I will wait for him. That was all that was said there.

Q. Will you tell us where in the basement this coal was – I will withdraw that.

Isn't it a fact that the coal was near the stairs in the basement?

A. If you call it scattered all over the basement, I would say that.

It was scattered all over the basement, the coal and cinders and everything. It was scattered all over the basement.

There was some coal by the stairways, but there were cinders and coal all the way up next to the front of the building.

I went in that basement not one time, maybe 20 times.

I knew where the stuff was.

Q. You knew the coal was all over the floor? A. I knew the coal

59 and cinders were all over the floor, yes I knew that.

Q. On that day of May 11th, when Harold told you and some of the others to go there, which you say you saw the coal, you knew how long it would take and how many men it would take to do the job? A. After he came over the second time and told me yes, I know.

We were trying to get it out any way. We were trying to make it a day out of it. As we went along it got worse and worse.

Q. Why did it get worse? A. If you ever carried a ten gallon pail of coal you will find out how heavy it is –

Q. I did not want to interrupt you.

Did you finish your answer? A. Yes.

Q. When you started the job, didn't you know the fellows were going to have to carry five and ten gallon cans? A. Not carrying that coal out, not with three mens, no, because he said go load up the wood in there.

When he came the second time, that is when he said you have to get that coal out of there.

Q. It was the second time he said it about the coal? A. It was
60 the second trip when he came over there.

We cleaned all the wood.

When he came and got me from Mutree that was the second trip he made over there.

Q. The only thing that was left was to clean the coal out of the basement? A. There was a little wood, we got the wood, we started to get the coal, and the coal got heavy and it was too much work for three mens down there so I went to get a couple of men.

Q. Who was the man who was in the basement that was bringing up the coal? A. Roger Evans was in the basement. Roger Evans was down in the basement.

Q. On May 11th, didn't you tell Harold you have had enough, you are quitting? A. I told Harold what again?

Q. On May 11th, that is the same day that we are talking about –

A. I told –

Q. – didn't you in sum and substance tell Harold you have had enough; you are quitting? A. I didn't have no talk with Harold on May 11th about me quitting. That is number one.

Because when Harold see'd me after he went back over to the office,

61 Harold didn't give me a chance to say anything.

He only said what he had to say and walked off from me.

Q. Didn't you tell one of the girls in the office that you have had enough – A. No.

Q. – and you are quitting? A. No, I did not.

HEARING OFFICER: Isn't it admitted that he was discharged?

MS. JOHNSON: It was originally in the answer.

That is what it said that Mr. –

MR. KATZ: The original answer when we were working out the amendments to the answer, I thought we had it on the record.

I indicated that with respect to that paragraph, which is 12, that with respect to all except Thompson they were discharged; with respect to Thompson, that he was – that he quit.

I thought we got that into the record. Maybe I overlooked it.

We were talking about admitting 1, 7, and 9.

HEARING OFFICER: No, it is not in the record.

MR. KATZ: It is not in the record?

62 HEARING OFFICER: No.

MR. KATZ: Well, we had at the beginning an off the record discussion.

I indicated to counsel for General Counsel that in respect to paragraph 12 when we went through all the allegations that with respect to that, that we admitted all those named there except Thompson were discharged and that he quit.

If we do not have that I would like to at this moment – I thought we did have it – move to amend the answer with respect to that part of paragraph 12 to the effect that Charles Thompson quit.

MS. JOHNSON: No objection.

HEARING OFFICER: All right.

Is there a date?

MR. KATZ: May 11th. That is the allegation of the complaint.

Q. (By Mr. Katz) Now, you say you fellows waited for Harold to come; is that right? A. Yes.

Q. In connection with where the office was located, where were you fellows in this motor vehicle? A. I parked the truck right across the door, where you back into the garage and that is where I stayed until he came, all except getting out of the truck and sitting in Jeffrey Maksymchak's station

63 wagon until he got there.

Q. Now when Harold got there, who was the first fellow he spoke to? A. Jeffrey.

Q. Did he ask Jeffrey are you going to work today? A. Yes.

Q. And what did Jeffrey say? A. He said I do not feel like it. I do not think I will work today.

Q. I am sorry. You dropped your voice. A. I do not feel like it and I am not going to work.

Q. And then Harold walked over and looked at Huff? A. No, he did not walk no further than where he was standing at.

He was standing right by the door where Jeff was sitting at the steering whell.

He did not walk any place.

Q. And did he say anything to Huff? A. He only siad that you are fired; you are drunk, you are fired.

The same thing he said to the other three of them.

Q. And to the three you mean including yourself? A. Including myself.

64 Q. Including Jeff? A. Including Jeff. He is fired, too.

Q. You say he then told you to go to the office and get your pay?

A. No, he did not say go to the office and get the pay.

He said come back later, about 4:30 and pick up your money.

That is when we drove off of his property and we did not come back until we came back for the check.

Q. And you all then picked up your pay? A. Picked up the pay. All except one. He did not come back.

Q. Who was that one that did not come back? A. Roger Evans. He got the train and went home and told me to tell him give him – give me his check and he would not give me the check.

He said tell him to come get his own check.

Q. When you usually have lunch do you have some beer? A. Sure, I have. It was not unusual though.

Q. No, I am – it was usual for you to have something to drink while you had lunch? A. If I feel like I wanted a beer, yes, I go get it.

65 Q. And on May 11th, when you had lunch, you also had a drink, is that right? A. I did not have a drink that morning because I did not have any money to buy anything with.

Q. You distinctly remember this day you did not have any money?

A. I did not have any money to buy anything to drink with.

A whole lot of days I did not have any money to buy anything to drink with.

Q. Any of the other boys have anything to drink that day during lunch?

A. Not that I can remember or that I see.

If they drinked, they drinked behind my back.

Q. Where do you fellows go when you go for lunch? A. Go for lunch?

Q. Yes. A. If we are close to the store we go across to the store. If we are around a restaurant, we go there.

Q. You all go together? A. Sometimes we do, sometimes we don't.

Q. Didn't you go together, all three of you, on May 11th, between 12 and 12:30? A. No, we did not go together.

66 Q. You went different ways? A. We did not go anywhere. We had our lunch.

Q. You mean you had lunch with you? A. Had lunch with me.

Q. So you were all together when you had the lunch? A. Sitting right there in the truck and had lunch.

Q. The three of you were sitting together? A. Yes, in the truck.

Q. You could see if any of the other three were drinking beer?

A. They wasn't drinking any beer at that time.

Q. I asked you whether you could see, because you told me you went across the street to eat. A. No, I did not say we went across the street eating. Not that particular day.

I said if we are close to the store and did not have anything to eat we would go across the street and get us something to eat.

They wasn't drinking in my presence that day. If they drink, they drink behind my back and they did not sit down and drink anything that day at lunch time. Not with me. I did not see them drinking.

Q. Do you know whether Harold Stark ever sent any employees home because they had been drinking? A. If he sent any of them home?

67 Q. Yes. A. Because they were drinking?

Q. Yes. A. Yes, him and his father have sent them home for drinking.

* * * * *

REDIRECT EXAMINATION

Q. (By Ms. Johnson) Were you ever sent home for drinking?

A. No, I was not.

* * * * *

RECROSS EXAMINATION

Q. (By Mr. Katz) Didn't you walk off the job on South Road one day prior to May 11th because you had been drunk? A. No.

Q. Weren't you there what Teddy – Do you know who Teddy is?

A. Yes, I know him.

Q. Didn't you walk off the job that day because you were drunk?

A. No.

* * * * *

EXAMINATION

Q. (By Judge Schneider) Mr. Thompson, as I understand it, this meeting was about April 30th was held at the George Peters house?

A. Yes sir.

Q. Now, to make sure I undertand your testimony, you say that neither Stark ever spoke to you about your drinking on the job? A. Not directly. I have been in the conversation when he was talking to the guys, because, you know, like I say, because he was talking to some of them about it.

Q. I mean he never singled you out specifically? A. He never came to me and singled me out specifically, and said you are drinking, I want you to stop, you are drunk.

Only that one time and he did not know whether I was drunk or sober, Your Honor, because I was sitting down just like I am sitting down now.

Q. All right.

Now, after you left the Farmers Boulevard job to look for Harold Stark, you came back in the dump truck? A. Yes, I drove the dump truck over to the office.

Q. And you parked – R. Right in front of his office.

69 Q. – right in front of the office? A. Yes.

Q. And was Jeffrey there at that time? A. No, he came a few minutes after I – after I got there.

Q. After you got there? A. Yes.

Q. What was the first thing you did? A. I went into the office and asked did anybody know where I could locate Harold, but nobody seem to know and I said well, I will wait on Harold, maybe he will be here in a few minutes, because I know he generally come in, he come in from time to time in the office so I figured if I wait a few minutes or a little while for him, that he would probably come in and either give me somebody or tell me something else to do, to help me.

Q. Then what did you do? A. I just went back outside and sat in the truck until Jeffrey came up.

I was sitting in the back seat there of the station wagon and waiting and talking.

Q. Well, Jeffrey came up and you were in the car? A. No, I was sitting in the truck when Jeffrey drove up.

I got out of the truck and, you know, went and sit down in the back of
70 the station wagon, because it was nothing unusual for us to sit in the station wagon.

Q. Yes – well, then you struck up a conversation? A. Well, you know, how guys sitting around and talking and waiting, not really a conversation.

You just sit there and pass the time of day with them, not nothing – you know, like serious or anything.

Q. Well, now, this was about what time? A. I had to be – it had to be after one at that time.

Q. Why did it have to be after one? A. Because I got over there at the office about – somewhere about quarter to, anywhere from ten to a quarter to one that day.

So I was sitting, you know, there a few minutes, maybe a little after one when Jeffrey drove up there, because I did not have no watch; I did not know

exactly what time was it.

Q. When was it in this conversation that Jeffrey told you he did not feel like working? A. When he came there and was sitting in the car and he said he did not feel good, and so we just kept on sitting there talking and then a few minutes Harold drove up.

When Harold drove up –

71 Q. Wait a minute. Hold it right there.

Jeffrey told you he did not feel well? A. Yes.

Q. And therefore he did not feel like working? A. Yes, I guess that is what he meant.

Q. All right.

How long was Jeffrey there before Harold came? A. It wasn't too long, Your Honor, because just sitting, and we were all talking, Harold drove up. I did not time it.

It was ten minutes, fifteen minutes, or something like that.

When Harold drove up, nobody said anything. He just got out of his card and walked straight to the truck – to the car I mean, that is when he asked Jeffrey was he going to work.

He said no, I do not feel like it. So I don't feel good, so I am not working.

Q. All right.

Now, when you went on this job to help Mutree nail up windows, Harold came – found you there? A. Yes.

Q. Right.

Now, was Mutree there at that time – A. Yes.

72 Q. – that you talked to Harold? A. At the time I talked to Harold.

Q. Yes. A. Yes he was there at the time that Harold came to and talked to me and he probably asked me what you doing up here, whatever he said to me, it wasn't nothing out of the way whatever he said to me, whatever it was.

Q. Were you all three of you together? A. Yes.

Q. Mutree, was he in a position where he could hear what was said? A. Yes, he could hear what was said.

Q. I understand that you told Harold that Mutree had come to you and said that Harold said you should come up and help me? A. Help him nail up the window; that is right.

Q. Mutree was there and presumably heard that? A. He heard what Harold said to me.

Q. What you said to Harold? A. No, he was not there – nothing was said to Harold, no more than I told him – he said for him to tell one of us to go help him nail up the windows.

Yes, he was there when I told him that, that he said for one of us to go up with him.

Mutree was present when I told him.

73 Q. Now, did Harold ask Mutree whether that was so? A. If he did, I did not pay any attention, because when Harold said go on back there, I walked back down out the door and Harold came down the street behind me.

Q. Did Mutree say anything during this conversation? A. No, he did not say anything as far as I know.

The only thing I walked out when he told me to go back down there.

Q. Now, this coal that you were to take out of the – out of the basement, was that coal or coke? A. Coal and cinders, and wet cinders.

Q. It was hard coal, not coke? A. Right, hard coal.

Q. The heavy stuff? A. It was heavy, yes sir.

Q. How much was down there? A. Well, I will tell you, if you put it all – I knew I couldn't get it all on the truck.

Q. But what capaicty truck do you have? A. A dump truck, not – didn't have a large body on it.

Q. Was it one ton, half ton? A. About two ton.

Q. About two ton? A. Yes, two or three tons.

74 Q. And at the time you stopped how much coal – how much coal did you have on that truck? A. I had some more stuff under there, but we had some on there, cinders and ashes and –

We had some of everything on there when we came out of the basement, cinders, ashes, bottles, you name it.

Q. How much of the coal that was in there, did you get out and actually put it on the truck? A. We did not get too much out.

Q. How much is not too much? A. I would say we put on about half a ton maybe.

Q. About a half ton? A. Yes, then we had lunch and decided to go to the office.

Q. If you had a half ton in the truck, how much was there in the basement? A. It was over a load in there.

Q. That would be over two tons? A. That was two tons. There was over a load in there. Coal and cinders together.

HEARING OFFICER: That is all I have.

REDIRECT EXAMINATION

Q. (By Ms. Johnson) Has Harold Stark ever purchased, provided, or given you or any other men beer or other drink on the job? A. Pur-

75 chased; you said purchased?

Q. Or given. A. Or given it to me?

Q. Or given. A. Well, not directly, but I know he has given the money to get it with.

As a matter of fact, he did it at one time. I walked up to him; it was cold in the winter time and we were unloading the truck.

It was raining and sleeting and I did personally walk up to him and said I want five dollars on Saturday morning.

What are you doing to do with it?

I am going to go up to the liquor store and get a pint of scotch.

And that is what I did.

Q. Did he give you the money? A. Yes, he handed me the $5 and Mutree helped me drink the liquor, if you want to know everything.

MS. JOHNSON: No further questions.

MR. KATZ: I just have one.

RECROSS EXAMINATION

Q. (By Mr. Katz) This coal that was in the basement, that is peat coal – the small coal? A. The small coal. The small coal.

76 MR. KATZ: I have no further questions of this witness.

* * * * *

JEFFREY MAKSYMCHAK,

A witness, called by and on behalf of the General Counsel, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Ms. Johnson) Are you currently employed? A. No.

Q. Were you previously employed by Fred Stark at 198-10 Jamaica Avenue – A. Yes.

78 Q. Queens, New York? A. Yes.

Q. What was your position? A. General laborer.

Q. When did you start working for Mr. Stark? A. May, 1972.

Q. Speak a little louder. A. May 1972.

Q. Who gave you your work assignments? A. Either Harold Stark or Fred Stark.

Q. Was your work ever criticized? A. No.

Q. In the spring of 1973 was there a union organizing campaign?

A. Yes.

Q. Would you tell me about it? A. A bunch of workers met and

talking about a union. We decided that we will meet a union representative at George Peter's apartment.

Q. Who was at this meeting? A. The people present?

Q. Yes. A. Roger Evans, Charles Thompson, Wayne Huff, Kenroy Bishop, Phil Ortiz, myself, that's it.

79 Q. Do you remember about when the meeting took place? A. April 30th.

HEARING OFFICER: What was the answer?

THE WITNESS: April 30th.

HEARING OFFICER: All right.

Q. About what time of day, do you recall? A. It was after work. After 4:30.

Q. Could you tell us what happened at the meeting? A. We discussed the union with the union representative, and like we signed some cards. We decided to sign some cards.

MR. KATZ: I assume this is merely cummulative.

MS. JOHNSON: It is only by way of introduction. There is no question they had a meeting and they had some discussion.

HEARING OFFICER: Do you propose to dispute that?

MR. KATZ: No. I don't have no knowledge of it. They said they had a meeting, that's it.

MS. JOHNSON: Fine.

Q. Do you remember what was going to happen after the meeting?

A. They were supposed to send out a letter notifying Mr. Stark that we were joining the union.

Q. What happened after that? A. We went to work normally, nothing happened for a few weeks, then I got fired.

80 Q. Could you tell us what happened on that day?

Do you remember what day it was?

A. I got fired on May 11th, a Friday, I came in from school around 1:30 or so, between one and 1:30, went inside the office to see where the other workers might be because I used to come in with my car and like, if nobody was there, I would drive to the job, you know, I was inside the office when the truck pulled up with Charles Thompson, Wayne Huff, Roger Evans.

I went outside, talked to them, Charles went inside and like he came back out and he said he was waiting for Harold for more men so we just sat in my car.

Eventually like Harold pulled up, looked inside the car, asked me if I was going to work, I said no, I didn't feel like working.

He looked inside, he said – looked inside at Wayne, Charles and Roger and said you are all drunk, you are all fired and just left in his car and said come back to get our pay and that was it.

Q. Had you been drinking that day? A. No.

Q. Did you refuse to work that day? A. No.

HEARING OFFICER: The answer was no?

THE WITNESS: No.

81 Q. Did you have any other conversations later with Harold Stark?

A. I went in and got paid and that was it.

I came back the next day, I asked him if I could have my job back because I figured it was kind of a – I felt I was fired unfairly because like –

MR. KATZ: I move to strike what he felt.

THE WITNESS: Okay. I came back – should I answer?

MS. JOHNSON: Continue.

A. I came back and I asked Harold, this is Saturday, the next day, if I can have my job back.

First he said not until everything cools off, maybe in a couple of weeks come back and I will probably get the job.

So I came back in a couple of weeks, several times I asked him if I could

have my job back and the conversation implied I will get my job back if I get out of the union.

* * * * *

82 HEARING OFFICER: When you came back after a couple of weeks, tell us what was said then.

THE WITNESS: Well, like I asked Harold several times like if I could have my job back, and like from the conversation he said like you could have the job back whenever – as soon as you get out of the union, so like I kept–

Q. Did he say that? A. Well, like – don't quote me like that, but that was the conversation; it was implied.

* * * * *

83 A. Like I can't really say if he said that like word for word but that was what implied – so like I kept coming back.

I asked him like –

HEARING OFFICER: Tell us exactly what he said as nearly as you can recall and then we will determine whether or not we think that under those circumstances there was such an implication, but we don't want your opinion.

THE WITNESS: Okay.

HEARING OFFICER: We only want to know from you is what he said–

THE WITNESS: Okay.

HEARING OFFICER: – as nearly as you can recall.

THE WITNESS: He said something like you can have your job back, get out of this union.

He said to me like what did you join the union for, didn't I treat you good and it's like stabbing me in the back.

What did you do it for, something to that general effect and like, so I kept coming back because I didn't feel like – I didn't feel like he would still– I figured he would hire me again after a while, so like I kept coming back, I asked him, you know, if I can have my job back, I kept getting the same

84 response, so like I just gave up and didn't come back and asking for the job anymore.

Q. Did he ever say to you you would get your job back if you get out of the union? A. Yes.

HEARING OFFICER: The answer was what?

THE WITNESS: Yes.

HEARING OFFICER: The answer was yes.

THE WITNESS: Yes.

MR. KATZ: When you said he said, can we have who he is talking about and can you fix the time?

MS. JOHNSON: Harold Stark.

HEARING OFFICER: I understand this was Harold Stark.

THE WITNESS: Yes.

MR. KATZ: Can you fix a date or time for approximation?

THE WITNESS: I can't really fix it because – the only date I could say that I am sure of is like the day after I got fired, but then later he said come back within a couple of weeks and like I kept coming back, like I was off from school now and I was looking for a job, I kept coming back every now and then, I kept getting the same answer.

85 So I just eventually gave up about asking for a job.

* * * * *

CROSS-EXAMINATION

Q. (By Mr. Katz) You were a part-time worker; is that correct, sir? A. Yes.

Q. You worked from sometime in June of '72 to August the 25th of '72 and then you didn't work until January of '73? A. I don't think so. I don't think that is right.

Q. You don't think so? A. No, because like – just say that again. Let me just catch up again.

86 Q. In the year of '72 did you commence working about June 26th, 1972 and you worked until August 25th, 1972 and then you didn't return to work until January of '73? A. No. Like I worked full time during that period, that is like the summer period that year.

Q. Yes, that is June to August is the summertime, you were a student? A. Once I came – once I started school again I started working part-time and like I was still working like that.

Q. What hourly were you receiving? A. 2.25 an hour.

Q. Now, on May 11th, 1973 what was your regular time to report to work? A. I usually report after school which was usually between one and one thirty.

Q. You would report to the office? A. Yes.

Q. Generally you would work in and around the office? A. Not always because like I said before I would ask like where the general workers would be and like I drive with my car there.

Q. Who would give you the directions of where to go to work?

87 A. I would just ask one of the secretaries in the office, just saying where is everybody working and like they would say maybe Far Rockaway, maybe down at the Mercer Building and I would drive down there.

Q. You would ask one of the secretaries where some of the men were working and you would go yourself to wherever you want to on the job? A. Wherever the men were working.

Q. Didn't the men work on more than one job on the same day? Weren't there different crews? A. Yes.

Q. Well, how would you know which job site to go to and which crew usually join? A. Well, I would go to just the ones that they would know, like say, if they knew where like George Peters was working, say they would say George Peters is out at so and so, so I would drive out there.

If they knew where somebody else was, I would go out to them and like I would just work like that.

Q. When you came in on May 11th you say you asked one of the secretaries where the men were working? A. I came in and – I don't know if I asked. I don't think I asked.

Like I just came in, I was talking around –

Q. You did what around? A. I was talking to one of the secre-
88 taries.

Q. Oh. A. A few of the secretaries, and like I didn't bother asking because as soon as I got there like Charles Thompson pulled up in the truck and so like I figured go right away – I'd stay with them.

Q. You were in the office, weren't you? A. Yes.

Q. You came into the office? A. Yes.

Q. Did Charles Thompson come into the office after you were already there? A. Like, I was there, like he came in, like I see the truck pull up, you know, so I figured right, I will await, I will get on the truck.

Q. Did he have any conversation with you? A. No.

Q. Did you get on that truck? A. Yes.

Q. Where did the truck go, go around the corner from the office? A. No, the – Charles came out. He said he needed more men, he was waiting for Harold, so I just waited there with him.

Q. You waited where with him? A. Outside the car – in my car.
89 Outside the office and like eventually Harold drove by, he seen us, he asked me if I was working and like he fired us all.

He asked me if I wanted to work. I said no, I didn't feel like working then.

Q. He asked you if you felt like working or you wanted to work? A. I don't know if he said – he said are you working to me. I said no, I don't feel like it. So like –

Q. Is that because of something Charles Thompson had said to you? A. No.

Q. You told him you didn't feel like working? A. No, that is because, when I came in I wasn't feeling too good, I finally decided sitting around waiting for Harold to come, I wouldn't work, I didn't feel like working that day, so I just sat in the car after a while, you know, and like we called – what do you call it – like when Harold came he asked me if I wanted work, I decided eventually no.

Q. You decided not.

When was this that you decided that you didn't feel like working that day? A. I can't really say. I don't know.

Q. When you came into the place around one, one thirty –

90 Q. – at that time you came ready to go to work? A. Yes.

Q. You felt like working in between one and one thirty, right?

A. At that period, yes.

Q. Will you please tell us, you said you eventually you decided you didn't want to work, when with respect to one or one thirty, how long after that did you decide that you didn't want to work? A. A little while I guess, because I just decided like –

Q. When you say a little while, will you give us to the – the best you can, what you mean by a little while, is it a half hour, two hours, half a day?

A. Within a half hour, I would say.

Q. And that was after you saw Charles Thompson and you went out with him; is that right? A. No. Like – well, kind of, yes, but like he didn't influence me in any way.

Q. I didn't ask you if he influenced you. A. Okay.

Q. I just asked you whether your decision not to work was after you had spoken to Charles Thompson. A. Spoken to him about what?

Q. Whatever you spoke about or you tell us. What did you talk to

91 Charles Thompson about when you left the premises to see him?

A. I asked why did he come back?

He said he needed more men, so like we decided to sit in my car, like I wasn't feeling too good, so I eventually decided I wasn't going to work that day.

When Harold came up to ask me if I wanted to work, I said no, and that was it.

Q. How far was your car from where Charles Thompson was with the other fellows? A. In front of it, across the street –

Q. What? A. In the general area. Right like – I don't remember exactly where it was, but the truck was here and I was sitting within a block away.

I was like almost right in front of the office.

Q. Did you hear while you worked for the company that fellows had gotten drunk on the job and the company had criticized them for it?

A. I knew of a few workers who got criticized, yes, for being drunk.

Q. Did you personally see any of the men drunk on the job during the period you worked? A. You mean drinking or drunk?

Q. Did you see them drunk on the job – A. Yes.

92 Q. – while you were working? A. Yes, I seen a few, yes. I seen a few.

Q. Did you see anybody drinking on the job? A. Sometimes. Occasionally, yes.

Q. Did you ever hear Harold Stark warn employees not to drunk on the job? A. He would talk like – not like individually say it, but like sometimes he would come out and just say no drinking or just like that, you know, like the whole crew would get together, just call like a meeting and he would just say no drinking on the job, you know, something to that effect. That was about it.

Q. Did you ever hear Harold Stark warn Wayne Huff not to drink on the job? A. Yes, sir.

Q. What did you hear him say to Huff about not drinking on the job?

A. All I heard was he told him not to drink and that was it.

Q. Did he tell him it interfered with his work? A. No.

MS. JOHNSON: Can we fix the date?

Q. When about, to your recollection, was the time that you heard Harold Stark tell Wayne Huff not to drink on the job? A. The summer

93 of '42 – the summer of '72.

Q. The summer of '72? A. Yes.

MR. KATZ: May we have this affidavit of this witness which is dated November 14th, 1973 marked Respondent's Exhibit 3, for identification.)

(Above-referred to affidavit marked Respondent's Exhibit 3, for identification.)

Q. I show you Respondent's Exhibit 3 and direct your attention to the last page and ask you if that is your signature.

(Document handed to witness.)

A. Yes.

Q. You read it before you signed it? A. Yes.

HEARING OFFICER: The answer is yes?

THE WITNESS: Yes.

Q. I call your attention to the bottom of page 2, this paragraph, would you read it to yourself, it goes over to the first line – that is the paragraph which says neither Fred Stark nor Harold Stark nor Rita Stark ever discussed unions with me. I never said anything to them about unions. A. Yes.

94 Q. Isn't it true therefore that you never discussed unions with either Fred Stark, Harold Stark or Rita Stark? A. That is true, yes.

Q. You never told them that you joined the union; isn't that true?

A. No – well, that is true, yes. I never told them.

HEARING OFFICER: You didn't tell them that you joined the union.

THE WITNESS: Right.

HEARING OFFICER: All right.

Q. Now, on direct testimony you were asked by Board's Counsel have you ever been criticized in your work and you said never.

Do you remember that? A. Yes.

Q. I again show you Respondent's Exhibit 3, your affidavit, and call your attention to page 3 and that part where it says Fred Stark usually picked something small to criticize about my work and the other's work.

A. Yes.

Q. Isn't it true therefore – A. Hold it. I just want to say if you read that next sentence. It says there, Harold Stark indicated –

Q. Read it. Go ahead – indicated to me on several occasions that my
95 work was satisfactory? A. Right.

Q. I consider myself the better – A. Worker.

Q. –worker there. Right? A. Yes, but what I mean by that, like I would – say you would be working, right, and like –

Q. No. I just – you read this? A. Yes.

Q. And I now want to ask you whether it's true or not that Fred Stark did criticize some of the work you did? A. Yes, but let me say something.

Q. Go ahead. A. When I said that I had in state of mind, say you are working, you are told to do something, Mr. Stark would come around and tell you he doesn't want it like that, do it another way.

Harold would come around, listen, it's okay, like he might be in a bad mood or something, that is what I mean by criticize, something like that.

Never criticized in which I did a poor job or something like that, you know, just like – I was told to do something, Mr. Stark would come around and say something opposite and Harold would know, I was told to do something he would just say, you know, overlook it or something like that, you
96 know. He is in a bad mood or something. Follow me?

Q. Are you finished with your answer? A. Yes.

Q. The meeting you went to of the union, was that the same meeting that Charles Thompson went to who testified earlier? A. Yes.

Q. You heard him testify that was April 30th.

Was that the date? A. Yes.

Q. Now, did you put a date on your card or did you leave it undated also? A. I really don't know. I would have to see the card.

I really don't know.

MS. JOHNSON: Do you wish the card?

MR. KATZ: Yes, if you don't mind.

(Ms. Johnson handed the card to Mr. Katz.)

MR. KATZ: Can I have this marked, please.

(Above-referred to card marked Respondent's Ex. 4, for identification.)

Q. I show you Respondent's Exhibit 4 and ask you whether there was any discussion as to leaving the date off at this meeting you attended?

97 (Card handed to witness.)

A. To the best of my knowledge, no. I don't think so.

Q. May I see it again, please? A. Yes.

(Card handed to Mr. Katz.)

Q. Thank you.

Now, on May 11th when you got to the office about one thirty didn't one of the secretaries or rather one of the girls in the office tell you to hang around the office until Harold Stark came back to give you your work?

A. I don't remember. I will tell you, I don't know.

Q. I show you Respondent's Exhibit Number 3, and call your attention to the paragraph in which you state on Friday, May 11th, 1973 I went to school, went home, had lunch and went to the office about one thirty p.m.

I thought I was going to work. One of the secretaries told me to stick

around the office until Harold Stark or somebody came back to give me my work. A. Okay. Yes.

Q. Do you recall now that she told you to stick around the office until Harold came to give you your work? A. Well, like I said before, I would stick around.

If Harold didn't come around, like I seen the truck, I would get on the truck then.

If Harold didn't come – if he came around, he would give me my work
98 if they didn't know where any of the workers were, but since that day the truck came around, I go automatically with them.

Q. But Mr. Witness, on this particular day, May 11th, 1973 –

A. Yes.

Q. – isn't it a fact that you were told to hang around the office until Harold came to give you your work? A. I really don't remember, because like –

Q. Isn't that what you swore to in this affidavit? A. Yes. Right. But like –

Q. And when you made this affidavit you were telling the truth?

A. Yes. But all – what I am trying to say is like if Harold – what is the question again? Like if Harold came around, you know, he would tell me what to do.

If he didn't come around, like, I would go with – go drive to one of the places where they were working because like a lot of times they would say hang around because Harold will be back in a few minutes, he will tell you what to do or something.

Like since Harold wasn't there I figured I would automatically be going with the truck that pulled up.

Q. When you got there Harold wasn't there, right? A. Yes.

99 Q. You didn't see him? A. Right.

Q. The girl in the office told you to wait until he came, didn't she and he would give you your work? A. She said that? I don't remember. I don't know if she said that or not.

Q. Mr. Witness, let me again show you your affidavit and ask you to look at the part where it says one of the secretaries told me to stick around the office until Harold Stark or somebody came back to give me my work? A. Okay.

Q. Let me give it all.

I don't recall the secretary's name that I spoke to? A. Right.

Q. I waited for about five minutes – A. Yes.

Q. – in the office. Charles – Charlie Thompson came in the office looking for Harold? A. Right.

Q. Now, isn't it a fact that the secretary told you to wait there until Harold came to give you a work assignment? A. That is a fact, but it says also here, Harold Stark or somebody and since somebody came, I automatically went out to them.

100 Q. Are you now telling me that Charlie Thompson would give you the work? A. No, like I would just – because he was with the truck, like he would have the orders from the morning, so I would just follow whatever they were doing.

Q. Isn't it somebody else that you are talking about in this affidavit, someone who would tell you where to go to work on the afternoon of May 11th, 1973? A. Sometimes, yes. Yes.

* * * * *

Q. Was Helga in the office when you came?

HEARING OFFICER: Who?

MR. KATZ: Helga, H-e-l-g-a, S-c-h-e-n-k?

THE WITNESS: Yes.

Q. Was she in the office when you reported around one thirty on May

11th, 1973? A. Probably.

Q. Pardon me. A. Probably. Most likely, yes.

Q. Well, Mr. Witness, if I tell you that in fact when you came there she wasn't there, I don't want a probability and I am not trying – I want to get the facts – didn't the other girl say you wait until Helga gets here, she
101 wants you to get out with some disposses with her? A. That day–

Q. I am talking about May 11th, 1973. Let me break that question down.

First, isn't it a fact that when you got there – A. Yes.

Q. – around one thirty p.m. on May 11th, 1973 Helga was not in the office? A. See, I don't know if she wasn't. I don't recall.

Q. You know Helga? A. Yes, she is right there.

Q. She is the lady right there?

(Mr. Katz indicated.) A. Yes.

Q. Isn't it also a fact that the girl in the office told you to wait around for Helga, Helga wanted you to go someplace with her? A. To the best of my knowledge, I don't remember that, no.

* * * * *

102 Q. Now, you say that you then went out of the office and you sat in your car? A. Yes.

Q. And the other men sat in the – was it a truck or what type of vehicle were they in? A. Well, they were in the truck. They came out and sat in my car also.

Q. So all four of you sat in your car – A. Yes.

Q. – and were waiting for – A. Harold to come back.

Q. –Harold to come? A. Yes.

Q. And during that time you had some conversation amongst the four of you? A. Yes.

Q. On May 11th, 1973 when Harold Stark told you you were fired– A. Right.

103 Q. –did anybody outside of yourself make any statements to Harold? A. No.

Q. Nothing was said? A. Because as soon as he said like, you're fired, he just left right away.

We didn't have a chance to say anything even if we wanted to, you know.

Q. Who left? A. Like Harold pulled up to the car, that's understood, you know, after he fired us all, he automatically left.

You couldn't say anything even if you wanted to say something, you know.

Q. How long would you say Harold was there? A. Five minutes. Less.

Q. In that time you couldn't have said anything, none of you said anything? A. He just said something to me – he asked me if I was working and I told him like – he looked in the car window; he said you have all been drinking, you are all drunk; you are fired and as soon as he said you are fired, he just left.

He just got back in his car, you couldn't even – even if you wanted to yell at him, he was gone.

104 Q. You said he looked into the car, did he stick his head up into the car or was his head up against the window? A. I don't know. He stood up next to the car.

I don't know if he stuck his head in or not.

Q. This was in May of last year.

Were the windows open to the car? A. Probably, yes. So like when he talked to me, he could hear – I can hear every word he said, you know, like everybody could hear because the window – it probably was open, you know.

Q. What? A. The window was probably open, I guess, you know, and like as soon as he said we are fired, he just left.

Q. Isn't it a fact that your car was parked on this day in question about three quarters of a block away from the office, you had to make a right turn and go down about three quarters of the block which is not the office or the warehouse of the office, isn't that where you fellows were sitting in your car? A. I really don't recall.

Like I said before, it was within a block of the office I said. It could have been –

Q. You are clear that it was not in the – near the office or the warehouse, you weren't in front of there? A. No. Like I just want to say,

105 like if you wanted to go to the office, you would definitely have to see my car there because like it was like a direct path with the office, you know, so it wasn't really far from the office at all, you know.

It was – I don't even remember where, but I just know – it couldn't have been far, you know.

* * * * *

Q. (By Ms. Johnson) Were there other occasions when you decided after school you weren't going to work that day? A. Other occasions?

Q. Yes. A. Like besides that day?

Q. Yes. A. Like I wouldn't come in sometimes if I had a big test.

MR. KATZ: What?

THE WITNESS: I wouldn't come – like I was going to school, you know, like I wouldn't come in the day before a big test or anything like that, like those – or if I was sick.

Other than that I would come in almost every day.

* * * * *

109 Q. You just testified a few minutes ago that before an exam if you made up your mind, you weren't going to work, you didn't come in the next day? A. Yes.

Q. Right? A. Yes.

Q. But on May 11 you did come in and you testified you were ready to go to work when you did come in; isn't that true? A. Right.

MR. KATZ: No further questions.

REDIRECT EXAMINATION

Q. (By Ms. Johnson) Why did you decide not to work that day?

A. Because I wasn't feeling good.

MS. JOHNSON: No further questions.

MR. KATZ: I don't want to repeat – we have got that in the record already.

HEARING OFFICER: Mr. Maksymchak, why weren't you feeling good on that day?

THE WITNESS: My stomach just didn't feel good, that's it. I don't know why.

HEARING OFFICER: Your stomach was upset?

THE WITNESS: Yes.

110 HEARING OFFICER: It hadn't been bothering you up to when you came to work?

THE WITNESS: Well, slightly, but then like it just – I decided forget about it, you know, not to work, just like it seemed to get worse, so I decided, like, not to work.

HEARING OFFICER: You mean after you got there it got worse?

THE WITNESS: Yes.

HEARING OFFICER: Now, I would like to know exactly Mr. Maksymchak, what was said at the time that Harold Stark came up to your automobile.

I want to know everything that he said and everything that you may have said.

What was the first thing that he said when he came to your automobile?

THE WITNESS: He asked me if I was working and like by that time I decided like I wasn't going to work because I wasn't feeling good, you know, so I just like – if I told him I wasn't going to work he would say okay, you know, you are not working –

HEARING OFFICER: I want to know what he said and what you said.

THE WITNESS: Okay. So like I told him I wasn't going to work, he said okay –

111 HEARING OFFICER: Did you tell him you weren't going to work?

THE WITNESS: Like, I figured like this was what I was going to lead up to before, like if he wants to know – in a way I didn't have to explain myself –

HEARING OFFICER: I don't want explanations.

I just want to know what you said and what he said and what anybody else said there.

THE WITNESS: I didn't explain to him why I didn't want to work.

HEARING OFFICER: You just said I didn't want to work.

THE WITNESS: Right.

HEARING OFFICER: You said you didn't want to work or you didn't feel like working?

THE WITNESS: I didn't feel like working.

HEARING OFFICER: What did he say?

THE WITNESS: He looked in the car, he said you are drunk, you are drunk.

HEARING OFFICER: Pointing to whom?

THE WITNESS: Roger Evans, Charles Thompson and Wayne Huff and he goes you are all fired, and he just left.

HEARING OFFICER: Well, then he left?

THE WITNESS: Yes.

112 HEARING OFFICER: And he didn't say anything further to you?

THE WITNESS: No, he just like – just left, couldn't possibly say anything, quick, he left real fast.

HEARING OFFICER: He didn't tell you you were fired?

THE WITNESS: Like he said the whole – like in the whole car, you are all fired, you know, he said you are all fired.

HEARING OFFICER: He said you are all fired?

THE WITNESS: Yes.

HEARING OFFICER: Well, when he said you are drunk, did he point at you?

THE WITNESS: I really don't know like if he pointed at me or if he meant me also, I was included with the car.

HEARING OFFICER: But he also said that Thompson was drunk?

THE WITNESS: Yes, he said, like, you are drunk, you are drunk and you are drunk, you are all fired.

Like when he said you are all drunk, I don't know if he was like referring to me also or what. He didn't say – he didn't go – he didn't name the person saying that you were drunk.

He just said you are all drunk, you know, and then he just left.

HEARING OFFICER: Let me make sure I have this sequence straight.

113 He pointed and said, you are drunk, you are drunk and you are drunk and he said you are all fired and then he walked away.

THE WITNESS: Right.

HEARING OFFICER: And nobody said anything.

THE WITNESS: No.

HEARING OFFICER: None of the four of you said anything –

THE WITNESS: Right.

HEARING OFFICER: And nobody said anything.

THE WITNESS: No.

HEARING OFFICER: None of the four of you said anything –

THE WITNESS: Right.

HEARING OFFICER: – after that.

THE WITNESS: Right.

HEARING OFFICER: All right.

THE WITNESS: I just want to say something, because like in a way like they used to be a bunch of workers there that lie were known drinkers, they had been fired and like, they would just, like be sent home or something and they had come back the next day, like nothing happened, they had been sent home, you know, like two or three times a day and like when we didn't – when he said you are all drunk, you are all fired, like I didn't expect – like I said before, I came back the next day, I expected to be rehired again because, like there was no enforcement like for drinking or anything like that.

114 Just like you would be just sent home and you come back the next day, like nothing happened, you know, and like so when I – like we didn't have a chance to say anything first of all.

And secondly, like when I came back to work – like asked him the next day, like I asked him what do you mean we are drunk, we are fired.

He said you are fired, you know.

HEARING OFFICER: So that you came back the next day –

THE WITNESS: Yes.

HEARING OFFICER: –at the regular hour?

THE WITNESS: No, I came back in the afternoon, I came back – I don't know what time, but I didn't come back – like on Saturdays I would be in eight o'clock in the morning.

I didn't come in to work at all that day because he said we were fired, so I decided I will talk to him sometime during the day and ask him if I can have the job back.

HEARING OFFICER: All right. The next day was Saturday.

THE WITNESS: Yes.

HEARING OFFICER: And ordinarily on Saturday did you work–

115 THE WITNESS: Yes.

HEARING OFFICER: – in the morning or the afternoon or all day or what?

THE WITNESS: All day.

HEARING OFFICER: All day?

THE WITNESS: Yes, like on days like – say like I would work –

HEARING OFFICER: Wait.

On that Saturday morning did you come in on the morning?

THE WITNESS: No.

HEARING OFFICER: You didn't come in in the morning?

THE WITNESS: No.

HEARING OFFICER: Ordinarily you would have?

THE WITNESS: Yes.

HEARING OFFICER: Why didn't you come in in the morning?

THE WITNESS: I really don't know. I just decided – in a way I was kind of – I was like mad because where does he come off firing me, like, you know, I was in a way maybe holding out, I decided – he is not going to come to me and say I can have my job back and decided to go to him and ask for my job back.

HEARING OFFICER: What time was this on Saturday?

THE WITNESS: I don't know. Sometime in the afternoon.

116 HEARING OFFICER: And tell me what you said to him and what he said to you on that occasion?

THE WITNESS: I asked him could I have my job back, something to this effect, you know, he goes – first he goes not until everything cools off. Come back like in a couple of weeks or so.

HEARING OFFICER: And was that the extent of the conversation?

THE WITNESS: Yes. Then I left. Then I came back a couple of weeks later and asked him again.

HEARING OFFICER: All right.

Now, on this occasion when you came back a couple of weeks later, I want you to clear this up, Mr. Maksymchak, when you first testified about that, I understood you to say that you implied that Harold Stark mentioned the union – said that you could have your job back if you dropped out of the union?

THE WITNESS: Yes.

HEARING OFFICER: Now that is what I understood you to say.

THE WITNESS: Yes.

HEARING OFFICER: But later on you changed your testimony and you said that he did say that.

THE WITNESS: Well, look what I meant the first part.

117 HEARING OFFICER: I want to know why you changed your testimony?

THE WITNESS: Like I want to say, the first part, like I don't want to be quoted he said exactly that, but what I mean is, that was the general impression, like, that was the conversation, you know, like I would ask him if I can have my job back and eventually come to – like, you are not going to have your job back until – if you get out of this union, you will have your job back, you know, something to that effect, you know.

Like he would go, I have been good to you, why did you join the union for?

I gave – like you came in any time you wanted, what are you doing this for, something like that, you know.

HEARING OFFICER: Well, when you say he said something to that effect, I don't know whether he really said that or whether he said something different.

THE WITNESS: No. Okay.

HEARING OFFICER: If he said something different, I may draw – I may have a different interpretation of what he said than you did.

That is why it is important that I know exactly what he said, not what you interpreted him to mean, but his words.

118 THE WITNESS: Well, I would like – I would say that like from – like, what I implied and what he said I would say, like he said not until you get out of this union.

Do you follow me?

HEARING OFFICER: No, I don't.

Again I am not sure whether you are saying that he actually said those words or whether you just interpreted his words as meaning that.

THE WITNESS: Well, like, the first – I want to say like I came back a few times, you know, and like the first – like what I mean implied, the first couple of times he didn't say – that is when he implied it.

And after a while he came out and said like, get out of the union, you will get your job back, that is what he said.

HEARING OFFICER: On later occasions when you came back he specifically said these things you say?

THE WITNESS: Yes.

HEARING OFFICER: Well now, over how long a period of time did you come back and ask for your job?

THE WITNESS: I know I came back that Saturday. Then he said come back in a couple of weeks. So I came back in a couple of weeks – a week or so, and then like –then he said – then like I came back a few weeks after that,

119 a little less often because I kept getting the same response so he eventually after a while I could see I was getting nowhere, I wasn't going to get my job.

I just decided not to ask anymore, you know.

HEARING OFFICER: This sounds as if this took place over a period of – over a couple of months.

THE WITNESS: Yes – like, I got fired like, say, just before I got out of school, you know, and like, I came around often, the beginning of the summer because I want to work fulltime for the summer, then after a while I used – this got dragged along, around August or something, I don't want to work for just a month, I am going back to school in a couple of weeks, so I decided that is when I started coming a little less frequently.

It was kind of drawn out for a long period of time.

HEARING OFFICER: I don't understand, in August you were still coming back and asking for your job back?

THE WITNESS: Yes. Probably August – July, August.

HEARING OFFICER: July or August?

THE WITNESS: Yes.

HEARING OFFICER: And how many times all told, would you say you came back?

THE WITNESS: I can't say – put an exact number on it. I just came back, you know, every couple of weeks or so, you know, I came back quite often.

HEARING OFFICER: Well, let's see.

You came back more than once?

THE WITNESS: Oh, yes.

HEARING OFFICER: That would be two times.

THE WITNESS: Well, more than two, I know. At least four or five, at least –

HEARING OFFICER: At least four or five?

THE WITNESS: Yes.

HEARING OFFICER: Now, when you were answering questions about the conversation in the car when the other three men were there with you, I

understood you to say that you all decided to sleep in the car, did I understand you correctly?

THE WITNESS: No, I didn't say that.

HEARING OFFICER: Oh, I see.

Now, on these occasions when you say you decided not to come in on some days because you had examinations or because you were sick or other things, did you give notice to them that you weren't coming in?

THE WITNESS: No, because like whenever I used to come in, I used to sign a chart, you know, like they used like to have a chart of all the people that worked there and you sign in and like the secretaries knew I usually
121 came in around one thirty or so and they would see me sign in, so I would put like my name.

And I put the time on it, you know, like I say from one thirty to four thirty, you know, if I worked overtime, say to five or something, five thirty, I would go and tell them, you know, they would just like keep it on a sheet and eventually by Friday they would just add up all the hours and pay me accordingly, you know.

HEARING OFFICER: My question was when you decided not to come in on some days, did you notify the company that you weren't coming in on that day?

THE WITNESS: No, I didn't have to.

HEARING OFFICER: You didn't have to?

THE WITNESS: No.

HEARING OFFICER: If you didn't show up, that was all right with them?

THE WITNESS: Yes, if you didn't show up, you just didn't get paid for that, you know.

HEARING OFFICER: I see.

Nobody ever said anything to you about not showing up on particular days?

THE WITNESS: No, no.

HEARING OFFICER: All right.

Those are all the questions I have. Ms. Johnson?

122 FURTHER REDIRECT EXAMINATION

Q. (By Ms. Johnson) In July did Harold Stark use the words if you get out of the union you can have your job back?

* * * * *

A. I said yes.

Q. Did in July Harold Stark say or use the words, if you get out of the union you can have your job back? A. Yes.

Q. In August did Harold Stark use the words if you get out of the union you can have your job back? A. Yes.

MS. JOHNSON: No further questions.

RECROSS-EXAMINATION

Q. (By Mr. Katz) When he said these things, you continued to come back and ask for the job; is that right?

Is that what you are telling us?

A. Eventually, yes. I cam back, kept getting the same response, then I decided how many times am I going to come back and ask? I decided I am

123 not getting anywhere, so I decided not to come back after a while.

MR. KATZ: No further questions.

HEARING OFFICER: One thing I forgot to ask you.

What response did you make to Harold Stark when he said you can have your job back if you get out of the union?

THE WITNESS: At first I thought maybe –

HEARING OFFICER: Not what you thought. What you said to him.

THE WITNESS: I don't know if – like, I can't really say – I don't know what I said to him.

HEARING OFFICER: You don't know what you said to him?

THE WITNESS: Like I just said no, I just hold back and said I am not getting back out of the union.

At first when he said – first said that I thought maybe I will get out of the union and then after a while, he kept being so persistent, I just said like no, I am not getting out of the union.

It just kept going on like that.

* * * * *

124 JEFFREY MAKSYMCHAK,

a witness, having been previously sworn, resumed the stand and testified as follows:

FURTHER RECROSS-EXAMINATION

HEARING OFFICER: I will remind you that you are still under oath?

THE WITNESS: Yes.

Q. (By Mr. Katz) On May 11th, 1973 at this time when you and the other three men were out in the car waiting – A. Yes.

Q. – didn't there come a time when Helga Schenk came over to the car? A. That I don't remember.

Q. I can't hear you, sir. A. I don't remember.

125 Q. When you say you don't remember, you mean it could have happened, but you don't recall it now?

MS. JOHNSON: Objection. He is asking him to speculate.

MR. KATZ: I am asking him to explain his answer.

A. I don't know.

Q. You don't know? A. I don't know if she came over or not.

Q. Now, with respect to the times that you weren't going to show up because you had exams or some other reason, wasn't it your usual practice to call in and tell Helga Schenk that you wouldn't be in and give a reason for it? A. Never had to once call in.

Q. You never once had to call in? A. Right.

Q. You tell us you never once called in and told Helga Schenk you are not coming in – A. Right.

Q. – and gave her a reason for it? A. I never once did that, no, because we weren't required to.

Q. Mr. Witness, whether you were required to or not, did this happen or not?

Did you ever call Helga Schenk and tell her you weren't coming in?

126 A. No.

* * * * *

127 ROGER EVANS,

a witness, called by and on behalf of the General Counsel, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Ms. Johnson) Would you please state your name and address for the record? A. Roger Evans, 55-15 99th Street, Rego Park.

Q. Could you speak a little louder, please? A. 55-15 95 – 55-15 99th Street, Rego Park.

Q. Mr. Evans, are you currently employed? A. I was employed by Mr. Fred Stark.

Q. Are you currently employed, right now? A. No.

Q. Were you previously employed by Fred Stark at 198-10 Jamaica Avenue, Queens? A. No.

128 Q. Were you previously employed by Fred Stark? A. Was I what now?

Q. Were you previously employed by Fred Stark – A. Oh, yes –

Q. At 198-10 Jamaica Avenue? A. Yes.

Q. When did you start working for Mr. Stark? A. It was about the last of May, 1972.

Q. What was your position? A. General laborer.

Q. Who gave you your work assignements? A. Harold Stark and Mr. Stark.

Q. And in the spring of 1973 was there a union organizing drive among the – A. Was what?

Q. Was there a union organizing drive among the employees of Fred Stark? A. Yes, in April.

Q. Could you tell me what happened? A. Well, about – in around the last of April of '73 my brother-in-law gave me the information there would be a meeting, it would be at Mr. Peter's house.

Q. Who is your brother-in-law? A. Charles Thompson.

HEARING OFFICER: Who?

129 THE WITNESS: Charles Thomspon.

HEARING OFFICER: Charles Thompson?

THE WITNESS: Yes. We went to Mr. Peter's house after work, I would say about five thirty, six o'clock.

Q. Who was at the meeting? A. There was –

HEARING OFFICER: I understand that is not in dispute.

MS. JOHNSON: We will go on then.

HEARING OFFICER: No dispute about it.

Q. There was a meeting. What happened after the meeting?

A. The union delegate from – was it 42B, 42B came there, so he told us – he showed us what we had to do, you know.

* * * * *

A. Well, he gave us the information and a card that we had to fill out, so we filled the cards out and everything, he told us about the insurance, and what benefits we would have.

130 Q. Did you sign a card? A. Excuse me.

Q. Did you sign a card? A. Yes.

Q. Do you recall what was going to happen after the meeting?

A. Well, he said we may get fired and we may not.

Q. What happened after that? A. After that we went on back to work and that was – until May 11th, '73, that is when we got fired.

Q. What happened on that morning when you went to work?

A. That morning when I went to work he assigned me to Charles Thompson.

Q. Who is he? A. What?

Q. Who assigned you? A. Harold assigned us to Charles Thompson, so we delivered some pipes and stuff over to Mercer Building.

Q. Who else was with you? A. Wayne Huff. So we left from there after we delivered the pipe, we went over to Farmer's Blvd. to clean up.

So we cleaned up over there, we cleaned up the wood and stuff, throwed it all on the outside on the back. So in the meanwhile about eleven o'clock Charles was upstairs because Mutree was over there, he said he was going to

131 help Mutree put up a – nail up a window.

* * * * *

THE WITNESS: In the meanwhile Charles Thompson was inside the building, Wayne Huff and myself was outside, throwing the stuff that we had throwed out on the truck.

So I never did see Mutree, I just only heard his voice, so while they were gone Harold came over, we was in the back and he asked us where was Charlie.

So we told him, he said – he told us he was going with Mutree up to the other building there, to nail up a window.

So Harold came back down, we were still in the back loading the truck.

So Charles came back, we started downstairs. So we started bringing the

132 rough stuff from downstairs, and throwing it outside.

So we throwed it up on the truck. So that was about – it must have been about eleven thirty then. So we had some pails and so we started cleaning up the small stuff, putting it in the pail.

So we loaded for about a half hour, the pail.

So Charles said it was too much for three men, three men couldn't carry it all the way upstairs and throw it on the truck.

So I went downstairs, loaded the pail, and Wayne was standing on the step and I was bringing it to the step and Wayne was taller than I was.

So he would give it to Charles and so at 12 o'clock we just took off for lunch, and so – we all got together and said it was just too much work for three men.

So we said we would go in and he said he would try to get more men.

Q. Go in where? A. We went –

Q. You were going to go in where? A. To the office.

Q. All right. A. So we went over to the office and we parked in front of the office – not in front of the office, in front of the shop, the
133 garage.

So Charles went inside and Wayne and myself were sitting in the truck.

At that time Jeffrey drove up and so he drove up, we just got out and got in his car.

At that time Charles came back out and we got into Jeffrey's car because Jeffrey was parked right behind the truck.

So in the meanwhile that was about one thirty then, so about two o'clock Harold came up and said – asked Jeff, said are you working, Jeff said no, I don't feel like it.

So that is when he told Jeff, you are drunk, Wayne was sitting in the front, he said you are drunk, I was drunk and he said, Charlie, you have been drinking.

So that time he just got in his car and puiled off and that was it.

He said pick up your check. So I didn't go back and pick up mine until the next day.

Q. Do you remember if he said anything else? A. He didn't say

nothing else. I picked up my check that Saturday morning from Harold.

Q. What happened when you picked up your check? A. Well, when I picked up my check Henry Mutree was in the dump check and he
134 went somewhere, so I pulled up and he went in the office and got the check and I said thank you.

I spoke to Mutree because he owed me some money, so that was it.

Q. Did you have any conversations with Harold Stark or Fred Stark or any of the other Starks? A. Did I have any conversations, no.

Q. Have you ever been sent home from work before? A. I was sent home one Saturday for half a day. I was out one night drinking, so I didn't feel too good that morning.

But I came in that Saturday, so he sent me home a half a day.

Q. What happened the next work day? A. Well, the next – he told my brother-in-law, Charles Thompson, for me not to come back no more.

So I went with my uncle to catch Charles at work that morning, so I didn't even get out – he saw me in the car, Mr. Stark saw me in the car, so he told me to come on down and talk to him because he had gave Wayne Huff – Wayne Huff and myself ten dollars that Saturday, so I took the ten dollars.

Q. And what happened the next work day, did you work? A. Yes, he told me, he said, if I was not to get drunk anymore and pay Wayne his
135 ten dollars, I could go back to work.

Q. Did you go back to work? A. I went back to work that Monday.

Q. Were you ever drunk again on the job? A. No.

Q. Did you go back to work this time?

Did you go back to work after May 11th? A. No.

Q. Why not?

MR. KATZ: I object.

A. He never called me back.

* * * * *

Q. Why didn't you go back to work after May 11th? A. He never called me back.

* * * * *

137 Q. What did Harold Stark say to you at the car on May 11th?

A. He didn't say nothing to me, he said I was drunk.

Q. Did he say anything else? A. No.

Q. Did he say anything to anybody else? A. The only person he said something to was Jeffrey.

He said to Jeffrey, he said are you working, Jeffrey said no, I don't feel good.

He said everybody else – Charles and myself and Wayne Huff, he said Charles was drinking –

Q. After he said you were drinking did he say anything? A. He didn't say nothing else, but got in his car and pulled off.

138 * * * * *

Q. (By Ms. Katz) This union meeting – I will withdraw the question. The meeting that you attended on April 30th, 1973 – A. Right.

Q. – about how many people were there? A. There were seven of us.

139 Q. Will you give us the names of those who were present? A. Myself, Roger Evans.

Q. Who? A. Myself, Roger Evans, George Peters, Kenroy Bishop, Wayne Huff, Jeffrey Maksymchak, and Ortiz was there.

Q. You say Jeffrey, the fellow – A. Jeffrey.

Q. – who testified earlier was at that meeting? A. Yes.

MR. KATZ: May we have this witness' affidavit of November 1, 1973 marked as Respondent's Exhibit Number 5, for identification.

(Above-referred to affidavit marked Respondent's Ex. 5, for identification.)

HEARING OFFICER: I thought there was no dispute about the occurrence of the meeting.

MR. KATZ: On cross-examination, there is no dispute about the meeting, he made some statement about who was there, and in fact certain people who he says were there were not there.

It goes to credibility.

THE WITNESS: I forgot Charles Thompson and George Peters.

MR. KATZ: Pardon me?

140 THE WITNESS: Mr. George Peters was there and if I am not mistaken, Charles Thompson.

Q. At any time did Harold Stark or Fred Stark ask you anything about the union? A. No.

Q. At any time did Harold Stark or Fred Stark ask you whether you had joined the union? A. No.

Q. Did you ever discuss with Harold Stark and Fred Stark the union or anything about the union? A. No.

Q. Now, on May 11th, 1973 did there come a time when you saw Jeffrey? A. Yes.

Q. When for the first time did you see him on May 11th, 1973?

A. Around one thirty that afternoon.

Q. And where was it that you saw him? A. At the office.

Q. You went into the office? A. Yes – I didn't go inside the office, but I went to the office.

Q. When you say you went to the office, did you go inside or did you stay outside? A. Outside.

141 Q. Did you see Jeffrey either go in or come out of the office around that time? A. Jeffrey was there when we got there.

Q. When you say he was there, he was in the office or outside the office? A. He was outside the office.

Q. Did you see – A. No, wait a minute. Excuse me I take that back.

Jeffrey went in the office and he come back after we got there and he parked behind the truck.

Q. And was the truck around the corner about three quarters of the block down? A. No. It was right in front of the office parking – parking – parked in front of the gate.

Q. And Jeffrey you said parked right alongside – A. Behind the truck.

Q. Let me finish so you can make an answer.

Sir, you are telling me that Jeffrey parked his car right next to where the truck was? A. That is right.

Q. You testified that Jeffrey said I don't feel like working? A. That is right.

Q. Did you hear him say that? A. Yes.

142 Q. Where were you and where was he when he said it? A. Jeffrey was sitting in front and I was sitting behind him.

Q. Who else was in this car at the time? A. Charles Thompson and Wayne Huff.

Q. And to whom did Jeffrey say this? A. He said it to Harold Stark.

Q. And had Harold Stark said anything to him before that? A. No.

Q. You mean Harold Stark came up to the car and Jeffrey immediately told him I don't feel like working? A. No. First – wait. You asked me – you said had Harold asked him was he working.

Q. No, I didn't ask you that, Mr. Witness. We will start again.

I want to know from you, please, if before Jeffrey said I don't feel like working, Harold Stark said anything to Jeffrey? A. Yes.

Q. What did Harold Stark say to Jeffrey before Jeffrey made that

response? A. Harold asked Jeffrey was he working? Jeffrey said no, he said I don't feel like working today.

Q. On May 11th, 1973 did Harold Stark say anything to you?

143 A. No.

Q. Did you hear him say anything to any of the other men?

A. Wait. You are talking about when we was in the car?

Q. Yes. A. Rephrase the question.

Q. I will rephrase it.

When you and the three other men were in the car – A. Yes.

Q. – were you waiting for Harold Stark? A. Right.

Q. Did there come a time when Harold came to the car? A. Right.

Q. Did Harold drive up in his car? A. Yes.

Q. He parked his car near there? A. He was headed one way and we were headed the other way.

Q. Did Harold at that time, which you said it was around two o'clock, am I right? A. Yes.

Q. Did Harold say anything to you? A. Yes.

144 Q. What did he say? A. Well, he said you are fired.

Q. Is that all he said? A. He said you are drunk and you are fired, yes.

Q. Did you say anything to him? A. No, I didn't say a word.

HEARING OFFICER: Now who did he say this to?

THE WITNESS: He said it to me.

He said I was drunk and I was fired.

HEARING OFFICER: This was on May 11th?

THE WITNESS: Yes. Around two o'clock.

CROSS-EXAMINATION (Continued)

Q. (By Mr. Katz) On the morning of May 11th, 1973 you were at the office and you got an assignment to go to work? A. Yes.

Q. You got an assignment to go to work where? A. Farmers Blvd. after we delivered this stuff to – on – to the Mercury Building.

Q. How far away was the stuff that you had to deliver from the place of the office – in other words how long did it take you to get from the office to the first stop? A. It take you about 15 – I would say about 25, 30 minutes from the office, to unload and back over to Farmers Blvd.

145 Q. I didn't ask you to Farmers Blvd.

To the first stop where you say you had to unload some – A. I said 20 minutes.

Q. And then you went to Farmers Blvd.? A. Farmers Blvd.

Q. And you did work there? A. Yes.

Q. What work did you do at Farmers Blvd up until eleven o'clock that morning? A. Up until eleven o'clock we cleaned up the upstairs.

Q. Did you go down the basement at all? A. Not before eleven o'clock we didn't because we throwed –

Q. Did you go down after eleven o'clock? A. Yes, yes.

Q. What work, if any, did you do in the basement? A. We cleaned out the rough wood and stuff, carried it outside.

After we throwed that on the truck, we got the pail and we started filling up the pails and carrying them out.

Q. You filled up the pails with what? A. Well, you have got cinders, water and coal all mixed together.

146 Q. The coal was mixed with the soot and the dirt and everything? A. That is what he wants, to throw it all away because you couldn't separate it.

Q. And who did the shuffling of the stuff into the cans? A. I did.

Q. And who carried the pails or the cans out? A. I carried them to the steps.

Q. And who picked them up after you brought it to the step?

A. Wayne Huff.

Q. And for how long were you fellows doing that kind of work?

A. From about eleven thirty to 12.

Q. And 12 o'clock is your lunchtime; isn't it? A. Right.

Q. So in other words you did that work until your lunchtime, right?

A. Yes.

Q. And your lunch is from 12 to 12:30 – A. Yes.

Q. – is that right? A. Yes.

147 Q. At 12:30 you fellows came back, you say, to the – A. To the office.

Q. – to the office? A. Yes.

Q. Instead of going back to do the work, you came back to the office?

A. Right.

Q. And you came back because you wanted to talk to Harold Stark about getting more help? A. Charles Thompson wanted to talk to Harold about more help which we – Wayne and myself we figured we know we needed more help, too, because, you know, walking and then carrying the pails, too, and throwing them up, it is too much.

Q. The work was too much for you? A. Sure.

Q. Had you ever done this kind of work before in all of the time you worked for the company? A. I work with the company before – before then, five or six of us were together.

Q. Whether three men work on a job or five men work on a job, each man carries and picks up one can; isn't that right? A. Yes.

Q. One container? A. Yes.

148 Q. All right.

You finish your lunch around 12:30, you said? A. That is right.

Q. And then from there you went directly – A. To the office.

Q. – to the office? A. Yes.

Q. Isn't it a fact that the office is only about five minutes away from the job you fellows were doing at that time? A. It is five or ten minutes, yes.

Q. Well, what happened from 12:30 until after one o'clock when you said you got back to the office, where did you go? A. We waited there at the office.

Q. What time did you arrive at the office? A. I said between 20 minutes and quarter to one.

Q. Did you make any stops on the way after your lunch? A. Yes, at the stop light.

Q. That is the only place you stopped? A. That is all.

Q. And you had your lunch, with the three of you together?

A. Right, there in the truck, in the back.

149 Q. And you finished your lunch and after lunch you came back to the office? A. Right after 12:30.

Q. Now, when you got to the office you said there were only secretaries there? A. I don't know. I didn't go in the office.

MR. KATZ: Can we have this – well, let me show Respondent's Exhibit 5, your affidavit of November first and call your attention to page 3 where you said we went back to the office to get more men, but only secretaries were there, the top line.

THE WITNESS: I didn't say that.

Q. You didn't say that? A. No. I couldn't say it because I didn't go in the office. I stayed in the truck.

Q. Did you read this affidavit before you signed it? A. Yes.

Q. And you made changes – for example on this page 3 I see you have your initials once, twice, three, four, five, six times? A. No, when they made the mistake –

Q. Wherever there is a mistake you had them cross it out and put

your initials? A. Yes.

Q. Now, you are just telling me that this is a mistake, you don't know–

150 A. What happened, Charles had came back to the truck and said there wasn't nobody in there but the secretaries.

So I just – maybe this way he made the mistake when he wrote it down.

Q. Charles made the mistake when he wrote it? A. No, the other guy.

Q. The fellow who wrote out this statement? A. That is right.

Q. You mean the Board agent made a mistake? A. Yes.

Q. Didn't you read this before you signed it? A. Yes.

Q. Now you next say there on this same page, we met Jeffrey who was picking up his pay check, but who was not working that day? A. We met him at the office.

Q. This was around one o'clock or so? A. Yes, one – one, one fifteen.

Q. Well, now one, one fifteen? A. Yes. It was between that time.

Q. This was before Harold Stark – A. Came.

Q. – came? A. Right.

151 Q. And this is before Harold Stark told you and Jeffrey, you guys are finished? A. Right.

Q. Was that true, that Jeffrey was picking up his pay check, but was not working that day? A. Well, when we got in the car with Jeffrey he said he was coming to pick up his pay check, he didn't want to work that day, he didn't feel like it.

Q. So that Jeffrey told you this before Harold Stark came and talked to you fellows? A. But when we got in the car –

Q. Is that true? A. Yes, Jeffrey said he didn't feel like working, so he came to pick up his pay.

Q. This is before Harold Stark came over and saw you fellows?

A. Yes.

Q. And this statement by Jeffrey was while you fellows were sitting in the car; is that right? A. Yes.

Q. What were you fellows talking about? A. Well, you know, people talk about a lot of things.

Q. Can you tell me at least one of the things you were talking about? A. I don't remember what we were talking about.

152 Q. You don't remember a single thing? A. I might ask him did he go see his girlfriend that night. I could have asked him did he go see his girlfriend that night.

HEARING OFFICER: Please only only one person speak at a time. The reporter can't get more than one person.

Q. Do you remember a meeting before May 11th, 1973 when Harold Stark addressed all the workers about this business of drinking? A. No, I don't remember no meeting. All that he just said in the morning, he said no drinking on the job.

Q. What morning did he say that? A. He said a lot –

Q. How many times? A. A lot of mornings.

Q. A lot of mornings he said that? A. He said it a lot of mornings because three or four different people on different jobs, he just said no drinking on the job.

HEARING OFFICER: This was Harold Stark?

THE WITNESS: Well, Mr. Fred Stark said it, too.

HEARING OFFICER: Oh, all right.

Q. Are you relating an incident sometime prior to May '72 when you
153 had been out the night and you had been drinking and the next day you say they didn't let you work.

Do you remember that incident? A. No, I don't.

Q. Well, wasn't there a time prior to May, 1973 when you were warned about drinking but you said that you had been drinking the day before – I

I am sorry, the night before but you took medication – A. Yes.

Q. – and that is the reason you were unable to work? A. That is right.

Q. And wasn't that the time that you were fired? A. No.

Q. Are you saying you were never fired? A. No. I was out two weeks for my leg, when I hurt my leg.

Q. I am talking about this drinking matter. A. All right. Go ahead.

Q. You say you were never fired? A. No, not on that Saturday. He told me not to come back.

Q. I am talking about the Saturday – A. I know what you are talking about now.

Q. You know what we are talking about now? A. Yes.

154 Q. Let me show you your affidavit, Respondent's Exhibit Number 5 and call your attention to the bottom where you say the Starks never caught me drinking on the job.

Once before during the winter before I was fired, Fred Stark sent me and Wayne Huff home early. He said we were drunk.

Didn't he fire you at that time in the winter before the incidents you are talking about now? A. No, no, he didn't.

Q. Well, didn't you tell the Board examiner – A. Yes, I see that.

Q. – that you were fired, is that a mistake? A. That is a mistake. I said that Saturday he fired us.

He said we was fired when he came back to work.

He told my brother-in-law for me not to come back to work, that had to mean I was fired, doesn't it?

Q. So you were fired once because of an incident about drinking; is that right? A. Yes, on that Saturday.

Q. And when you came back who spoke to you?

Was it Harold or Fred? A. Both of them.

Q. What did they tell you about the drinking, about doing it again, what did they say to you? A. They told me about the drinking – they told

155 me you know you were wrong for drinking on the job.

I said yes, sir, I know that.

He said you know you took the boy's money. I said yes.

He said, you quit the drinking and everything, and pay the boys ten dollars back, he said I am willing to let you come on back to work.

* * * * *

Q. I call your attention to your affidavit again, sir, that is Respondent's Exhibit 5, on page 3, the part where you say the Starks never caught me drinking on the job? A. You just showed me that.

Q. I appreciate it, sir.

Are you telling us that you did drink on the job, but they never caught you doing it, is that what you are telling us? A. I had a drink of beer but most of the time I had been drinking at home at night.

Q. No, but in this instance you actually drank on the job? A. I drank beer, too, yes.

156 Q. You drank beer and hard liquor? A. No.

Q. Just beer? A. That is right.

MS. JOHNSON: Can we specify when he is talking about?

MR. KATZ: The winter – according to his statement.

HEARING OFFICER: Is this – this is a winter incident.

MR. KATZ: This is, according to his affidavit.

HEARING OFFICER: I am confused. I thought he was testifying about the Saturday incident –

MR. KATZ: Well, I assumed –

HEARING OFFICER: – which related to the direct examination.

MR. KATZ: I assume it is the Saturday.

THE WITNESS: Yes, it was on the Saturday when we got fired.

MR. KATZ: Let's ask the witness.

Q. To the best of your recollection when did this incident happen that we are talking about? A. It was during the winter.

Q. During the winter? A. Yes.

157 Q. The stop you made on May 11th, 1973 before you went to the Farmers Blvd job, you said you had to drop something off at a stop?

A. Yes.

Q. What was it you dropped off? A. It was some metal pipes.

Q. Some what, what was the first word? A. Metal pipes.

Q. Copper pipes? A. Not copper pipes. Just metal pipes – copper tubing. Put it this way, copper tubing. Not the copper tubing – the other tubing.

Q. Did all three of the fellows do it or one fellow do it? A. All three of us did it.

MR. KATZ: I have no further questions.

REDIRECT EXAMINATION

Q. (By Ms. Johnson) Mr. Evans, where you drinking on May 11th, 1973? A. No.

Q. Did you refuse to work that day? A. What?

Q. Did you refuse to work that day? A. What?

Q. Did you refuse to work on May 11th? A. No.

158 MS. JOHNSON: I have no further questions.

RECROSS-EXAMINATION

Q. But you didn't go back after lunch to the job, isn't that true?

A. That is right, because I was with Charles Thompson and I was under Charles Thompson.

Q. You were under Charles Thompson? A. Right.

Q. You took his orders? A. Sure, I took his orders.

Q. Who is Charles Thompson? A. Charles Thompson is one of the employees.

Q. He is not a supervisor? A. He is not but I was working under him.

Q. He is not a foreman, is he? A. No, he is not a foreman but Harold Stark gave me the orders that morning.

Q. To do the job, clean up the place? A. Harold didn't tell me what to do. He told Charles to tell us what to do so I had to do what Charles tell us to do.

MR. KATZ: No further questions.

MS. JOHNSON: No further questions.

HEARING OFFICER: Now, Mr. Evans, I am not sure that I understood your testimony completely about the occurrences and what happened when
159 Harold Stark came to the car, Jeffrey's car on May 11th.

Will you repeat that for me, please, tell me exactly what happened, who said what?

THE WITNESS: On May 11th when he came to the car, he walked fast up to the car and he said Jeffrey, are you working, Jeffrey said no, I am not working because I don't feel good.

So after he said that, he said you are drunk.

MR. KATZ: To who?

THE WITNESS: Talking to Jeffrey.

HEARING OFFICER: Talking to Jeffrey?

THE WITNESS: Yes. Wayne was sitting on the other side, he said you are drunk.

I was sitting behind Jeffrey, he said you are drunk.

He tell Charles you have been drinking, so all you are fired.

HEARING OFFICER: You are all fired?

THE WITNESS: Yes, and he said come back at four thirty and get your check.

So I didn't go back to get mine until Saturday morning.

HEARING OFFICER: All right.

Now, if I understood your testimony correctly in answer to some ques-
160 tions of Mr. Katz, it must have been about 12:40 or 12:45 when you got back to the office on May 11th.

THE WITNESS: About 20 minutes – a quarter to one.

HEARING OFFICER: Twenty minutes or a quarter to one?

THE WITNESS: Yes.

HEARING OFFICER: All right.

Now, it was as I understand it, two o'clock before Harold got there?

THE WITNESS: Right.

HEARING OFFICER: And then during all this period of time the – either the three or the four of you –

THE WITNESS: The four of us.

HEARING OFFICER: – were sitting in the car?

THE WITNESS: Right.

HEARING OFFICER: And what were you doing during that period of time?

THE WITNESS: We were just gabbing off the mouth.

HEARING OFFICER: That was over an hour and quarter, at least hour and quarter, hour and 15 minutes?

THE WITNESS: Knowing him, he took it out on us.

HEARING OFFICER: I just want to be sure about the length of time.

161 THE WITNESS: Yes, I understand.

HEARING OFFICER: It was an hour and 15 minutes at least?

THE WITNESS: Yes.

HEARING OFFICER: And you just sat in the car talking?

THE WITNESS: That is all.

HEARING OFFICER: And the only reason you were there was because

you wanted some help or because Charles Thompson wanted some help –

THE WITNESS: Yes.

HEARING OFFICER: – with the coal?

THE WITNESS: That is right.

HEARING OFFICER: All right.

Now, one other thing.

This was on Friday, May 11th, was that a pay day?

THE WITNESS: Yes.

HEARING OFFICER: Now, Jeffrey as I understood it, was waiting for his pay?

THE WITNESS: Yes.

HEARING OFFICER: Well, why did he have to wait for his pay?

THE WITNESS: They usually pay us four thirty after we get back in from work.

HEARING OFFICER: I see.

162 Well, do you know why you have to wait until that time to get your check?

THE WITNESS: No, I don't.

HEARING OFFICER: Now, when Mr. Katz was asking you questions about this time that you were sent home on a Saturday in the wintertime?

THE WITNESS: Yes.

HEARING OFFICER: You said that something in the affidavit which you gave was wrong?

THE WITNESS: Yes.

HEARING OFFICER: Now what was it exactly that was wrong? I didn't quite understand it.

MR. KATZ: Do you want me – do you –

HEARING OFFICER: Do you remember the statement –

MR. KATZ: Yes.

HEARING OFFICER: – you pointed out to the witness?

MR. KATZ: Yes.

HEARING OFFICER: Give it to him and have him identify the statement, please, the portion of it.

(Statement handed to witness.)

THE WITNESS: He said, during this May month he signed – that he signed it, that he was fired during that month.

MR. KATZ: The statement, once before, the Starks never caught me on
163 the job once before during the winter before I was fired, he said he had never been fired for drinking before, he said this was wrong in the statement.

THE WITNESS: That was the only time I was fired.

MR. KATZ: And then Fred Stark sent me and Wayne home early, he said we were drunk.

HEARING OFFICER: Well, this doesn't say that you were fired before.

THE WITNESS: No.

HEARING OFFICER: I interpret that to mean that once before during the winter, before May 11th, Fred Stark sent me and Wayne Huff home early?

THE WITNESS: Yes.

HEARING OFFICER: Is that what that means?

THE WITNESS: That is right. That means I was fired only one time, during May.

HEARING OFFICER: You think that that says you were fired once before May 11th?

THE WITNESS: No.

HEARING OFFICER: Well, what is wrong about it, that is what I want to know.

THE WITNESS: Oh yes, I was fired once before. That is what I – I was fired this time and I was fired during the winter.

HEARING OFFICER: Yes, but what is wrong?

164 THE WITNESS: I was fired twice.

HEARING OFFICER: What is wrong about that statement, that is what I want to know.

THE WITNESS: Well, the way he – let me see it. It says in September I was fired then.

HEARING OFFICER: Where does it say that?

THE WITNESS: Right in here.

(The witness indicated.)

HEARING OFFICER: No, it doesn't.

THE WITNESS: Oh, when Stark caught us drinking on the job on or after – during the working hours, we was found and fired.

HEARING OFFICER: Mr. Evans, will you read to me from this statement what that statement says beginning there, read those words.

When you get down to here, stop.

(The Hearing Officer indicated.)

And then read them aloud to me.

THE WITNESS: Stark once kept me –

HEARING OFFICER: Stark once –

THE WITNESS: Found us – me drinking.

HEARING OFFICER: What?

THE WITNESS: Found me drinking on the job.

HEARING OFFICER: Never found you drinking on the job?

165 THE WITNESS: He found us drinking on the job. He found us drinking on the job. Once before –

HEARING OFFICER: He found us drinking on the job once before?

THE WITNESS: Right.

HEARING OFFICER: That is what it says there?

THE WITNESS: Yes.

HEARING OFFICER: What else does it say? Read it.

THE WITNESS: During that time we went before – I was found – I was fired. Fred Stark sent me home, me and Wayne Huff home. He said – the way he has it – he said we was drunk during – it says we were drunk.

HEARING OFFICER: Well, the statement says, the Starks never caught me drinking on the job, period.

THE WITNESS: Yes.

HEARING OFFICER: Once before, during the winter before I was fired, Fred Stark sent me and Wayne Huff home early.

He said we were drunk.

THE WITNESS: Yes.

HEARING OFFICER: This is the end of it.

THE WITNESS: Yes.

HEARING OFFICER: I think the witness has difficulty reading.

THE WITNESS: Well, that was –

166 HEARING OFFICER: All right. That is all the questions I have.

THE WITNESS: Yes. Well, that was – I said I was found fired twice.

HEARING OFFICER: All right.

THE WITNESS: That was in September, during the winter and then May.

* * * * *

WAYNE HUFF,

a witness, called by and on behalf of the General Counsel, having been duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (By Ms. Johnson) Please state your name and address for the record.

A. Wayne Huff, 88-43 205th Street, Hollis, New York.

Q. Could you speak a little louder, please? A. Yes.

Q. Are you currently employed? A. No.

Q. Were you previously employed by Fred Stark at 198-10 Jamaica Avenue, Queens, New York? A. Yes.

Q. What was your position? A. General laborer.

Q. When did you start working for Mr. Stark? A. Well, I had worked for him in '72 and then I started to work for him again in the beginning of February, 1973.

Q. Did you work fulltime? A. Yes.

Q. Who gave you your work assignments? A. Either Harold Stark or Mr. Stark.

168 Q. Was your work ever criticized? A. No.

Q. In the spring of 1973 was there a union organizing drive among the employees of Fred Stark? A. Yes.

Q. How did it come about? A. Well, I had been out – out of work and I had heard it from Jeff, and when I came back to work I said nothing about it, you know, to any of the fellows and they said nothing about it to me until the day of the meeting, they asked me are you going to sign up for the union?

I says yes, I will sign up for the union.

Q. Who, do you remember who asked you that? A. Yes, Charles Thompson asked me during work.

Q. And you went to the meeting? A. Yes.

Q. Did you sign a card at the meeting? A. Yes.

Q. Do you recall what was going to happen after the meeting? A. Well, the union representative told us that Mr. Stark would receive a letter telling him that some of his employees had joined the union.

Q. And what happened after that? A. Nothing. Work went on as
169 usual for a couple of weeks and then Friday we got fired.

Do you remember what day that was? A. Friday, May 11th.

Q. Could you tell me what happened when you started out at work that day? A. We had started out, it was me, Charles Thompson and Roger to go together to deliver some material, I don't remember the material,

to the Mercer Building.

And then we were to go to Farmers Blvd to clean out a building Mr. Stark owned there, and we had done that – we had cleaned the top floor – the ground floor, and it was about, I don't know, maybe about eleven o'clock when Mutree had come by and told Jimmy to – that Harold had told him to go over and help Mutree do something to another building.

MR. KATZ: I object unless you heard it.

I don't know whether he is telling us something that someone else told him or he heard Mutree tell this to Charles Thompson.

Can we have this fixed?

THE WITNESS: This is what Charles Thompson told me when he was leaving.

MR. KATZ: I object.

HEARING OFFICER: You didn't overhear it?

170 THE WITNESS: No.

HEARING OFFICER: All right. Then move on.

A. Then Charles –

Q. Tell us what you know. A. Charles Thompson was gone for a while and me and Roger – well, we had finished the ground floor and we were doing the back yard, there was a lot of garbage in the back yard, pieces of wood, branches, et cetera, and Harold Stark had come by and he had asked us where Jimmy – Charles Thompson was and so he told him he was over at the next building with Mutree doing something there.

So Harold went over there, and me and Roger were still in the back when they came back, Harold and Charles Thompson and they had gone down the basement and Harold had showed him what to do, and then Harold had left.

Then we started to do it, started bringing some of the stuff out, and it was about lunchtime there.

So we had lunch right at the truck because all three of us had brought our lunch.

So then we were about to start again and Charles Thompson just said this is too much because everything down there is wet, soaking wet, it is not like bringing up pails of garbage, everything is soaking wet, we need more men to do this.

There is ashes and some coal like around and garbage.

171 So we – he said we will go back to the office and ask Harold to get some more men. So that is what we did. We went back to the office.

Q. On that day did – do you remember what you had for lunch?

A. Just a couple of sandwiches.

Q. Did you have anything to drink? A. No.

Q. Go ahead. You were at the office. A. So we were at the office, and Charles Thompson went inside, me and Roger stayed outside, and while Charles Thompson was inside Jeff had pulled up, so Jeff asked us what was going on.

And I told him that Charles Thompson was in – inside the office asking for more men.

So then Jeff went in and then Charles Thompson came out and told me Harold wasn't there, that we should wait for him, so Jeff came out, he didn't have nothing to do.

And he was undecided whether he was going to work because he wasn't feeling good, so we just sat in his car and waited for Harold.

Q. Okay. Then what happened. A. Harold came by about, I would say half an hour or so later and he looked in the car and he said to Jeff and

172 he says, are you going to work today, Jeff says no, because I don't feel good, something like that, and – I don't remember what.

And then he looked at the three of us and he just says, you are drunk, you are fired, and then he was gone just like that.

He said – oh yes, he did say one more thing. He said come and pick up your pay later.

So after that we – Roger Evans wanted to go home, so we drove him into Jamaica and then we had come back and waited in front of the office and then later on Harold had came out – he came by me window this time.

And he just threw the pay checks on my lap and then we just left and that was it.

* * * * *

173 CROSS-EXAMINATION

HEARING OFFICER: Let's go back on the record.

Q. Mr. Huff, on May 11th you related that on that day – I will withdraw that.

You related that on May 11th, 1973 Harold Stark sometime in the afternoon came over to the car and you say he threw your pay envelope at you.

Do you remember that? A. Yes.

Q. Didn't he have to shake you and wake you up and say you are so cockeyed drunk you can't keep your eyes open? A. No.

Q. Did you say you were asleep? A. No.

Q. Did he touch you at that occasion? A. No.

Q. Did he say he doesn't know where to put your pay envelope?

A. No.

Q. Didn't he wake you and put it in your lap and say that is your pay envelope? A. No, he just dropped it in my lap.

Q. He dropped it in your lap? A. Yes.

Q. Did you say anything to him when he dropped it in your lap?

174 A. No.

Q. Now, this was sometime after you said he said you fellows were fired? A. Yes.

Q. You said nothing to him? A. No.

Q. Did any of the other fellows in the car say anything? A. No.

Q. Isn't it true that neither Fred Stark nor Harold Stark or Rita Stark

ever said anything to you about unions, good or bad? A. No, they never said nothing to me.

Q. They never discussed it with you? A. No.

Q. Were you ever told that your work was good? A. No.

Q. You were never told it was good? A. No.

Q. Now on May 11th, 1973, late in the morning Harold Stark came back with Charlie Thompson? A. Yes.

Q. Charlie Thompson was told you fellows have to get the coal out, you say, and all the other dirt that was in the basement? A. Yes, it was
175 mostly ashes and garbage down there.

Q. When you say mostly, how little coal or how much coal would you say that there was there? A. I don't know. You really couldn't tell because it was mixed in the wet ashes, it was scattered all around and there was ashes, and it was down there.

So I really couldn't tell how much coal was down there.

Q. Were you fellows working in the dark? A. It was practically dark.

Q. Did you see what you were doing? A. Yes.

Q. Up until lunchtime how much of the coal would you say you fellows had loaded and put into the truck? A. Quite a few buckets full we had put on the truck before lunchtime.

Q. Would you say you had completed half the job, quarter of the job, three quarters of the job, how much of the job of the coal bringing it up and putting it on the truck had you completed by lunchtime? A. I would say there was quite a bit still down there before lunchtime.

Q. Well, how much did you bring up, I know you told me what is down there, how much did you bring up? A. About half the dump truck
176 full plus the stuff in the back yard.

Q. How much of the coal that was in the basement did that represent,

half of drump truck? A. I don't know. A nice size pile of it.

Q. You brought up a nice size pile of it from the stuff in the basement? A. Yes.

Q. Now did there come a time when you fellows got disgusted and said you were going back to the office to get more men for the job? A. Yes.

Q. When did that happen? A. It was right after lunch.

Q. After lunch? A. Yes. We started working for a few minutes and we just can't do this because there is not enough men.

Q. After lunch you said you started to work again? A. Just for a few minutes, yes.

Q. Didn't you hear the other witnesses testify that right after lunch you fellows went back to the office and you did no work? A. Well, I am saying we worked a few minutes –

Q. I know what you are saying.

177 Did you hear their testimony? A. Yes, I heard it.

Q. Are you now saying that you fellows did commence work after lunch for a short time? A. For a few minutes, yes.

Q. Now the three of you then went back to the office and waited in the truck for Harold? A. Yes. We were back – we were in the truck at the time and outside of the truck at the time, outside the office while Charles Thompson went inside.

Q. And then Jeff came up with his car and you fellows got out, the three of you and went into Jeff's car? A. Jeff came out and came over to us and we were talking and then when Charles Thompson came out we all went into his car and sat and waited for Harold.

He was parked right across the street from the garage.

Q. About a month before you fellows were discharged, did Harold Stark address you workers in the place at the beginning of the work day before you went out on your assignments about a drinking problem among the men?

A. Not that I remember, no, but I do remember him telling – talking to Mutree and telling him not to come back cockeyed with Wayne and Charlie Plant because we were going upstate, because we went upstate two days in a
178 row to pick up material for Mr. Stark, it was about a month before we were discharged.

Q. And did you make a practice to be in the office in the morning with the other men and then be sent out on jobs? A. Yes.

Q. You heard the other men testify that Mr. Stark, Harold Stark did talk to them about the drinking problem in a group? A. Yes, I heard about the meeting myself.

Q. You don't recall it? A. I was either on the other side of the garage or doing something because I wasn't there at the time.

Q. You weren't there? A. No.

Q. All right.

Now when Harold Stark approached the car where you fellows were sitting on May 11th, what was the first thing you recall him saying? A. I recall him asking Jeff if he was going to work today.

Q. And then what happened? A. Jeff told him that he didn't feel like working.

Q. And this was about what time? A. I would say about two, I guess.

179 Q. So that from about a quarter to one to two o'clock the four of you had been talking, amongst yourselves? A. Yes.

Q. About how tall are you, sir? A. About five eleven.

Q. About how much do you weigh? A. About 200 pounds, 215 now.

Q. In the course of your work for Stark before May 11th, have you lifted cartons or boxes or cans? A. I didn't understand the question. Repeat that.

Q. Prior to May 11th, 1973 in the course of your work as an employee for the Starks had you ever lifted cartons or cans weighing around 50 or 45 pounds? A. Many times.

Q. And from time to time when you were called upon to do that, you did it; is that right? A. Yes.

Q. And the other workers also who did the general labor work did the same thing? A. Yes, they worked together to get a job done.

Q. When you fellows left the job after your lunch and then did a little work and you returned to the office, did Charlie Thompson tell you why you were going back to the office? A. Yes.

180 Q. What did he tell you? A. He told us and we agreed that we needed more men to do this job otherwise it would not get done. It couldn't get done.

Q. About how much before your lunch break had you fellows started to load this coal and the ash and the other stuff that was in the basement? A. I don't understand. Before lunch?

Q. Yes. A. How much – I don't know. There were quite a few pails full and we were shuffling it up – about half the drump truck was full, like I said.

Q. Would you say you started about eleven o'clock, ten thirty, what is your recollection? A. I would say eleven thirty or so. A little after that.

Q. So that in a half hour you had half of the drump truck loaded? A. Yes, a little more than half an hour.

Q. When you say a little more, 40 minutes, 45 minutes. A. I really don't recall.

Q. Was it less than an hour? A. Yes, it was less.

Q. So that in the period of less than an hour, the three of you working, as you testified, as you worked previously, were able to load half of that

181 drump truck? is that correct? A. No, because we were working in

the morning on the stuff on the outside – there was some stuff in there, too, already in the drump truck.

Q. Well, how much of the stuff from the basement – I will ask you again – had you loaded before you broke for lunch? A. I don't remember exactly. All I remember is quite a few pails full.

We worked right up until 12 o'clock.

Q. I am not asking you exactly.

I am just asking for your best recollection, how much of the stuff in the basement had you fellows carried up before lunchtime? A. I would say about 30 to 35 pails of garbage.

Q. 35 pails of garbage? A. 30, 35.

Q. Included in that was the coal, ashes and everything that was mixed in? A. Water and garbage.

Q. Pardon? A. Water garbage, that is what made it so heavy, that is why we needed more men, to form a line to get the job done.

182 It doesn't get it done when you carry a heavy thing like that back and forth because eventually you slow up if you have to carry it too far.

That is why we always form a chain when we are doing ashes and coal.

Q. If you always form a – I will withdraw that.

You started this job without a chain; is that right? A. Yes, because – well, we understood we were going to clean out the floor, the ground floor which had wood and stuff in it which you just take what you can, and just throw it on the truck.

It is not going from the basement upstairs dealing with heavy garbage and carrying buckets and lifting them and drumping.

This was just throwing lighter stuff like wood, et cetera, on the truck. That was what we understood.

Q. You understood this job you were sent out on didn't require you to go pick up stuff from the basement like coal and ash? A. I didn't

know anything about doing the basement that morning.

I just knew the ground floor and the back yard.

Q. Who told you for the first time you had to do work in the basement? A. When Harold Stark came back with Charles Thompson.

183 Q. He told it to you fellows? A. He went down the basement with Charles Thompson. Right away I knew we were going to have to clean the basement, too.

Q. You nevertheless for three quarters of an hour you said you did work in the basement, up until lunchtime? A. Yes.

Q. When you finished lunch you started to work? A. Yes, then we said forget it, this is ridiculous.

Q. By the way, when you signed that union card, you also signed it without a date? A. I don't remember putting a date on it. All I remember it was near the end of April, that is all I remember.

I don't remember the exact date of the meeting.

Q. I didn't ask you that.

You didn't – you heard the other witnesses testify they didn't put a date on the card, they left it without a date? A. I don't remember if I put a date or not.

MR. KATZ: May we have his card?

MS. JOHNSON: Would you like the card?

MR. KATZ: Yes.

MS. JOHNSON: Okay.

184 Here it is.

(Ms. Johnson handed card to Mr. Katz.)

MR. KATZ: Can we get a stipulation that his card is undated like the rest of them?

MS. JOHNSON: Sure.

Q. When Harold Stark pointed fingers to some of you fellows on May

11th, 1973 and said you are drunk, did anyone say we are not drunk?
A. No, nobody had a chance to.

Q. How long was Harold Stark there talking to you? A. Just as long as it took him to get those words out of his mouth he was there.

Q. Did anybody yell to him and say wait a minute, we are not drunk?
A. No.

Q. Did anybody get out of the car? A. I wasn't going to yell, I knew it was going to come eventually, I heard when they started their union in Brooklyn they were fired.

Q. This is in your mind, up in your mind, you knew they fired the people in Brooklyn? A. Yes, I had a feeling we were going to get fired, too, so I had no chance to say nothing to him because I was on the other side of the car anyway, so I didn't bother.

Q. Was the windows of the car open at the time? A. Jeff's win-
185 dow was open.

Q. Wherever you were sitting? A. I was sitting on the opposite side.

Q. Couldn't you get out of the car, I mean was the door locked or couldn't you walk out of the car? A. He was gone so fast I didn't realize what was going on.

Q. Let me ask you this, sir, prior to this occasion, May 11th, hadn't the Starks accused you of being drunk and being carried off a roof and you denied it, didn't you have a discussion with them once before; they told you you were drunk and you said it wasn't true? A. Yes.

Q. Now, on this occasion of May 11th you said nothing, you just listened to him, you didn't tell him you weren't drunk, you didn't say you are a liar, we are all able-bodied men, what we want is more men for the job, you said nothing about that? A. No, he was gone too fast.

Q. Did you see him come up the street towards you fellows? A. I

seen him when he came to the side of the car, that is all I seen him.

Q. He came to the other side of the car? A. Yes.

Q. Where Jeff was? A. Yes.

186 Q. And he spoke to Jeff? A. Yes.

Q. And after that what did he say? A. He just said the three of you are drunk, you are fired, come back later for your pay.

Q. Did you hear the other witnesses say, he pointed to one fellow and said you are drunk, he pointed to the second fellow and said you are drunk and a third fellow and said you are drunk

Did that happen? A. It might have. I don't remember.

Q. What were you doing, were you still asleep? A. I don't remember. It was a long time ago. I don't remember the exact details of what happened.

Q. Isn't this an important thing, when your employer is accusing you wrongfully as you say, you weren't drunk, isn't this important to you, you want your job – A. Yes.

Q. – don't you? A. Yes.

Q. And you said nothing to him about it? A. Right.

MR. KATZ: No further questions.

MS. JOHNSON: No questions.

187 HEARING OFFICER: Mr. Huff, what happened – what did the four of you do after – after Harold Stark walked away?

THE WITNESS: Well, Harold Stark then drove away.

HEARING OFFICER: He drove away?

THE WITNESS: Yes, walked over to his car and then drove away. Then we took – we drove away to Jamaica to take – Roger had said he wanted to go home, so we took Roger to the subway and then we had drove around for a while.

And we came back and that is when Harold came back and gave the envelopes.

HEARING OFFICER: Well, were you all there when he gave – when he passed out the envelopes?

THE WITNESS: Yes.

HEARING OFFICER: And did anybody say anything at that time – to him at that time about not drinking or not being drunk?

THE WITNESS: No.

HEARING OFFICER: Why not?

THE WITNESS: I don't know.

HEARING OFFICER: Why didn't you – why didn't you for example?

THE WITNESS: Because I had nothing to say to him, he fired me, that's it.

188 HEARING OFFICER: But you say that you were not drunk, and you had not been drinking?

THE WITNESS: No, I wasn't.

HEARING OFFICER: But still you didn't say anything –

THE WITNESS: He came by and dropped the envelopes on my lap and left.

HEARING OFFICER: Well, what are you saying, that you didn't have an opportunity to tell him or that you didn't tell him?

THE WITNESS: I really didn't have nothing to say to him and he was gone fast anyway, so I didn't go – jump out of the car and chase after him to talk to him.

HEARING OFFICER: Where did he go when he left the car?

THE WITNESS: I don't remember. He either went back into the office or he took off in his car again.

* * * * *

FURTHER CROSS-EXAMINATION

Q. (By Mr. Katz) You say you fellows after the first time where he said you were fired, you drove around for a period of time.

In whose car? A. Jeff's car.

189 Q. Who did the driving? A. Jeff.

Q. For how long did Jeff drive, would you say? A. I don't know. Jeff – oh, I remember, Jeff stopped off at his house and then we came back to the office.

Q. And all this time you were driving in Jeff's car? A. Yes.

Q. Over how long a period of time were you fellows in Jeff's car while Jeff was the driver, from the time Harold Stark said you fellows were fired until he gave you your pay? A. About an hour.

Q. You were talking to Jeff during this time? A. Yes.

Q Q. Did he complain about pains in the stomach while he was driving?

A. No. He went home and took something, I don't know what he did.

Q. You don't know what he did? A. That is right. That is what I just said.

Q. You don't know? A. No.

Q. So why do you say he took something, you didn't go in with him, did you? A. I said he might have taken something.

190 Q. He might have gone to a bull game, am I right, too? A. Yes.

* * * * *

225 16 Court Street
Brooklyn, New York
March 13, 1974

* * * * *

227 KENROY BISHOP

called as a witness, was duly sworn and testified as follows:

JUDGE SCHNEIDER: Be seated, please, sir.

DIRECT EXAMINATION

Q. (By Ms. Johnson) Please state your name and address?

A. Kenroy Bishop.

JUDGE SCHNEIDER: Speak right up, please, Mr. Bishop, so everybody can hear you.

A. 664 Alabama Avenue, Brooklyn, New York.

Q. (By Ms. Johnson) Are you currently employed, Mr. Bishop?

A. Yes.

Q. Who do you work for? A. Fred Stark.

Q. When did you start working for Mr. Stark? A. In May, 1972.

Q. What is your position? A. Laborer.

228 Q. In the spring of 1973, did there come a time when there was a union organizing campaign among the employees of Fred Stark? A. Yes.

Q. Can you tell me about that? A. Well, Charley Thompson told me that a delegate would be coming over to Peter, George Peter's apartment, after work, on the Monday, and one – one Monday in April. So, if I wanted to join, I must come over there.

Q. Did you go to the meeting? A. Yes, I went to the meeting.

Q. What happened at the meeting? A. We signed up some cards.

Q. Did you sign a card? A. Yes.

* * * * *

Q. What happened after the meeting, what was going to happen after the meeting, as far as you knew? A. The delegate told me that we'll hear from him, if the union come through.

Q. Did there come a time after that meeting, when you had a conver-

229 sation with Harold Stark? A. Yes.

Q. Could you tell me about that, when it was? A. Well, on the – on the same date when he fired George Peters.

MR. KATZ: Fired who?

THE WITNESS: George Peters.

MR. KATZ: George Peters?

THE WITNESS: Yes.

Q. What did he say to you that day? A. I went to the office about 7:30, and he took me in the back, and he told me that I can give up on the union, because it won't come here.

Q. Was anybody else present? A. Well, Louie Passani was there waiting for me to go to work, and he was calling me, and he – Harold Stark was there talking to me, telling me that, well, he fired all the guys, so I'm the only one he leave, so I can give up.

Q. Could you say again what Harold Stark said to you? A. He told me I must give up on the union, because it won't come in here.

Q. Did you have any further conversations with Harold Stark after that one? A. Well, that night, I asked him if he would – if he were there
230 working like me, and they bring the union over there, and if he would join, and he told me no.

Q. What night was that? A. That was – I don't know the exact date, but it's the same date he fired George Peters, because he told me he just fired him.

Q. I see.

Did he say anything about why he fired George Peters? A. Well, I know, because he joined the union.

MR. KATZ: I move to strike what he knew; not responsive.

The question is what did he tell him, if anything.

JUDGE SCHNEIDER: What was said, yes.

Q. How did you know what the reason was?

Did he give you a reason or what did he say to you? A. Well, he didn't give me a reason, but he come and mention the union to me. So I know that's the only other reason.

Q. What did he say about the union? A. He told me the union is no good, he told me they're going to mess this place up.

JUDGE SCHNEIDER: Which Stark was this?

THE WITNESS: Harold Stark told me that.

231 Q. Did you have any other conversations with Harold Stark about the union? A. No.

Q. Did you have any conversations with Fred Stark about the union? A. No.

Q. Did you have any conversations with other employees, after the union meeting? A. Yes.

Q. Could you tell us about that? A. On the same date, Louis Passani was waiting for me. I went in his car, and we took off to 195th Street, and then he started telling me that Mr. Stark was about to fire me this morning, that's what he told me, that Mr. Stark was going to fire me, and he told him –

MR. KATZ: Who told him this?

THE WITNESS: Louie Passani.

MR. KATZ: Have we had this gentleman identified?

JUDGE SCHNEIDER: I didn't even hear what the conversation was.

THE WITNESS: Louie Passani, he was a plasterer, I used to work with him.

Q. What did Mr. Passani tell you?

* * * * *

232 THE WITNESS: He said Mr. Stark said I must go against the union, he'll give me more money, and he'll pay me for holiday and he'll give me vacation pay.

So I tell him I'll think about it.

MR. KATZ: I move to strike as not binding on the Respondents in this case.

JUDGE SCHNEIDER: How are you tying this in with the Respondent, Miss Johnson?

MS. JOHNSON: We're going to try to bring Passani in, but he's been

unavailable so far.

MR. KATZ: Well –

JUDGE SCHNEIDER: Well, are you contending that Passani would be a representative of the Respondent?

MS. JOHNSON: No.

That Stark instructed Passani to tell this to Mr. Bishop.

* * * * *

234 JUDGE SCHNEIDER: Are you going to have evidence to establish that Stark – that Passani was given these instructions by the Starks?

MS. JOHNSON: We're trying to get Passani to come in.

We haven't been able – He's been unavailable so far. That's the problem.

MR. KATZ: He's an employee, he's subject to subpoena, and Mrs. Johnson knows they've issued subpoenas before, they've issued subpoenas in this case, and they can continue to issue subpoenas, if they require witnesses.

JUDGE SCHNEIDER: Well, do you have any evidence that would indicate that Passani was acting pursuant to instructions from the Starks?

MS. JOHNSON: Only the statement that Mr. Bishop gave me.

235 JUDGE SCHNEIDER: Well, but you have not talked to Passani?

MS. JOHNSON: I don't have his address, even.

JUDGE SCHNEIDER: Well, under those circumstances, I think that it's mere speculation, what Passani would say. I think that's a matter of investigation.

If you were unable to find Passani before, that's unfortunate, but I can hardly accept this unsupported hearsay testimony at this stage of the record, in support of the allegation.

I will, however, allow you this possibility. That if you – if before the end of the hearing, you have located Passani, and you want to call him as a witness, I will afford you the opportunity to do that.

But, in the meantime, I will strike the testimony of this witness relating to his conversation with Passani.

* * * * *

236 JUDGE SCHNEIDER: On the record.

Mr. Bishop, you've heard this record read.

In this conversation that you had with Harold Stark, who was it that told you he had fired all the guys, was it Harold Stark or Louie Passani?

THE WITNESS: Harold Stark.

* * * * *

237 CROSS EXAMINATION

Q. (By Mr. Katz) Mr. Bishop, you testified that on the day that George Peters was fired, you had a conversation with Harold Stark. A. Yes, sir.

Q. Now, you came into work about what time that morning? A. I didn't know the exact time.

I'd say about 7:30.

Q. Where did you go, to the office or to the warehouse? A. To the office.

Q. That's where normally all the fellows who are going to work, congregate and get their assignments? A. Yes.

Q. When you came into the office that morning, did you see Harold Stark? A. Yes, sir.

Q. Were other men around at that time, in the office?

There were other workers around? A. Louie Passani.

Q. Was the only one? A. Yes, that's the only one I saw.

Q. You saw nobody else? A. Nobody else.

238 Q. Did you see Charley Thompson there that morning? A. Charley Thompson?

Q. Yes. A. No.

He was already fired.

Q. Did you see anybody else?

In the office, at around 7:30, when you were getting ready to go to work.

A. No.

I come through the side door, and as I come through the side door, Harold Stark meet me by the door, and take me in the back.

Q. Side door, you mean to the office? A. No.

The warehouse, onto the office.

Q. Which back door are you talking about? A. We got a side door.

Q. The side door to what?

What does it lead into? A. To the warehouse, and into the office, too.

Q. To both? A. Yes.

Q. But you come into the office first, and then have to go into the warehouse? A. No.

239 You come into the side door, and there's the office just in front, as you come in.

Q. As you come in the door, is the office? A. Yes.

And the warehouse is right near the office.

Q. Then you have to go to the warehouse? A. The warehouse and the office is in one.

Q. Did Harold take you by the arm and take you into the warehouse, or – A. No.

He called me.

Q. He said meet me in the warehouse? A. No.

He called me and said I must come with him.

Q. Did he tell you where he was taking you? A. He was taking me–

Q. Did he tell you where he was taking you? A. He take me where they park the oil truck.

Q. He told you he just fired Peters? A. Yes.

He said that Peters, he just got fired.

Q. Fired him because he joined the union? A. He didn't tell me because he joined the union.

He didn't tell me for no special reason. But I just – He started mentioning the union to me. I know that's the reason.

240 Q. Did Mr. Stark tell you any reason, at that time, why he fired Peters? A. No. He didn't tell me.

Q. All right.

How long did this conversation that you had with Mr. Stark take place that day? A. About ten minutes.

Q. When you finished the conversation, you went in through the office where the other fellows were? A. I went into Louie Passani's car.

Q. You were going to work then? A. Yes. I was going to work with Louie –

Q. When did you get your assignment to go to work that morning? A. Louie Passani just – They didn't name me a point and say you must go with Louie Passani. Just came out and told me to go with him.

Harold Stark then told me I must go with him. He just take me to work with him all the time he come around.

Q. Isn't the usual practice during the period you worked there, when you come in the office in the morning, all the fellows are there, and Harold Stark lays out the work and tells the fellows where to go and with whom to go? A. Yes.

241 Q. Isn't that the uusual practice? A. Yes.

Q. Now, on this date that you say you had this conversation with Harold Stark, didn't Harold also do the same thing, tell the fellows where they were going to go to work? A. They didn't have no guys there.

They fired everybody that time.

Q. You're saying there was nobody there except this Louie Passani and myself? A. Passani, he was there.

Q. You were the only two that were there?

Everybody else had been fired? A. All these guys that used to meet there, they was already out.

Q. But in addition to the guys you met, weren't there other people working for the Starks, on the day that Peters was fired? A. Mr. Stark employed plenty of people, but I didn't see nobody around there at that same time, besides Louie Passani and Harold Stark.

I didn't even know if he was in his office that morning.

Q. Do you know Lawrence Moultrie? A. Yes, sir.

242 Q. He's a worker? A. Yes, sir.

Q. Wasn't he working for the company on the same day you say that you had the conversation with George Peters? A. I didn't see Lawrence Moultrie there that day.

I didn't know if he worked that day or what, because sometimes we go in early – as you get there, you go to work. To be truthful. If you get there twenty after seven, he send you out.

Sometime I don't know who come to work.

Q. In other words, you're now telling me on this day, the date you had the conversation with Mr. Stark, you don't know who came to work?

A. No, I don't know.

Q. Do you know Joseph Jackson? A. Yes, I know Joseph Jackson.

Q. Was he working on the day you had this conversation with Mr. Stark?

A. I said I didn't see nobody else.

Q. I asked you whether he was working for the Starks on the day you said you had the conversation? A. I couldn't tell you that.

* * * * *

243 JUDGE SCHNEIDER: He may or may not know.

Do you know whether Jackson was working on that day?

THE WITNESS: I didn't see him that morning.

JUDGE SCHNEIDER: The question is, do you know whether he was

244 working, whether that day he was working for the company?

THE WITNESS: I see him working there before.

Q. (By Mr. Katz) Haven't you seen him work after this day of the conversation? A. Yes. After.

Q. Do you know Daniel Manning? A. No. I don't know him.

Q. Do you know Hector Ortego? A. No, I don't know him.

Q. When did you start to work for the company? A. May, 1972.

Q. This conversation with Harold Stark took place the day you say that Peters was fired? A. Yes.

Q. What year was that? A. '73.

Q. Do you know Charles Plair, P-L-A-I-R? A. Yes, I know him.

Q. Was he employed by the Starks? A. Not now.

He was.

Q. Was he employed? A. Yes, he was employed.

245 Q. At the time you said you had the conversation with Harold Stark? A. Yes.

Q. When you say you were in the warehouse on this day when you had the conversation with Harold Stark, can you please tell us what was the first thing he said to you? A. Well, he called me and said I must come, and he walk in the back of the warehouse.

Like every morning you go there, they take you sometimes in the back of the warehouse and they got work for you to do.

He figured he was going to get me to work, take something off the truck, and then start to talk to me. Tell me I can give up on the union.

Q. He said you can give up on the union? A. Yes.

Because it won't come in here

Q. What did you tell him, if anything?

Did you say anything? A. I asked him a question.

Q. What did you ask him? A. I asked him if he were working there like me, if he would – if they were going to bring a union in, if he wouldn't join, and he told me no.

Q. What was the next thing that was said and who said it? A. I
246 told him I would think about it.

When I was leaving that's what I told him, I'll think about it.

Q. Is this the sum and substance of the conversation you had with Mr. Stark that day?

Have you told us now the entire conversation you had with Mr. Harold Stark in the warehouse, on the day that Peters was fired? A. I've already stated.

Q. You've told us? A. Yes.

Q. This is the whole conversation you had that day with Harold Stark, is that right? A. You want me to go over the statement?

Q. No. I don't want you to go over it.

Have you given it to me? A. You asked me a few questions, I gave you part of it. I already stated the whole statement here, now, already.

* * * * *

Q. Will you please give us the entire conversation – A. Yes.
247 Q. (Continuing) – that you had with Mr. Stark, on that morning you say in the warehouse? A. Yes.

Well, I went inside, as I opened the side door, went inside, he called me. He meet me by the door and called me and said I must come in the back. So, I went in the back. At least he started to talk to me.

He said I can give up on the union, because it won't come in here. And he told me that he had just fired Peters, I'm the last one to leave, so I can give up.

Q. Did you say anything then? A. So he, I asked him, he told me the union is going to mash this place up, it's no good.

Because he figured I didn't understand what a union – That's why he told me that.

Q. He told you what? A. The union is going to mash this place up, it's no good.

Q. I don't understand. A. It's going to mash this place up, it's no good. Mash this place up.

Q. The union is going to mash this place up? A. Yes. That's what he told me.

Q. Did he tell you anything else? A. Well, I did ask him if he was working there like me, if they're going to bring a union over there, if he
248 would join, and he told me no.

Q. Then what happened, if anything?

Was there any more conversation? A. I told him, I'll think about it. No.

He was telling me like I'll get more money, too, if I go against it.

Q. This is Harold Stark talking to you on the day Peters was fired?
A. Yes.

Q. Was there anything else said by Mr. Harold Stark to you, that day?
A. I don't remember.

Q. But you do remember that Harold Stark on that day, told you he would give you more money? A. Yes.

He said I can get more money.

Q. If you did what? A. If I go against.

Q. Go against the union? A. Yes.

Q. Do you remember that clearly?

You remember that clearly, right? A. Yes. I heard that three times. Three persons told me the same thing. Louie Passani told me –
249 Q. I'm talking about Harold Stark's conversation with you. A. Yes, he told me that.

Q. Harold Stark told you that on the day that Peters was fired?
A. Yes. He told me that.

Q. What else did he tell you? A. I –

Q. If anything. A. I don't remember.

MR. KATZ: May we have his affidavit marked as Respondent's No. 6 for identification, please?

(Whereupon, the above referred to was received and marked Respondent's Exhibit 6 for identification.)

Q. (By Mr. Katz) Mr. Bishop, I show you Respondent's Exhibit No. 6 for identification, and ask you, is this your signature on the bottom of the last page there? A. Down here?

My signature is not on the bottom. My signature is here. There's some other signature down here.

Q. Is that your signature? A. This is my signature.

Q. Did you read it before you signed it? A. Yes.

* * * * *

251 Q. (By Mr. Katz) Now, after you had this conversation and told Mr. Stark that you'd think about it, was that the end of the conversation?

A. Yes.

I walked – Louie –

Q. You walked out? A. Louie Passani was calling me, because he got – Mr. Stark didn't tell him what to tell me. So he didn't know what he was talking about.

Q. When he called you, you went, you left? A. Yes.

252 I went in his car.

Q. That was the end of the conversation with Harold Stark? A. Yes.

Q. I call to your attention, Page 2 and ask you to read the paragraph to yourself, which starts at the top, "One morning in May, Stark fired George Peters." This whole paragraph. Down to the place where your initials are.

Please let me know when you are finished reading it. A. I finished.

Q. Now, at the time you gave this statement, you were asked questions by the Labor Board Agent about what your conversation was with Harold Stark that morning? A. Yes.

Q. And you gave answers to them?

You told them what took place? A. Yes.

Q. You told them the whole story of what took place? A. I told him – yes.

Q. Let me show you your statement here, sir.

"Harold Stark called me in the warehouse, in the back of the building. He told me he had just fired Peters, but he did not actually say why. He told me to give up on the union, because it would never come in. He said he had al-

253 ready fired everybody who signed for the union, except me. I told him I'd think about it."

You told us before that after you made that statement, the other fellow called you and you went out, is that right? A. Yes.

Q. You didn't tell anybody from the Labor Board that you were promised more money, were you? A. No.

Q. You didn't tell him that? A. No.

When I give this statement, I didn't.

Q. You didn't? A. I didn't tell him that.

Because I couldn't remember everything at one time.

Q. You couldn't remember?

It was a long time, is that what you just said? A. I said I didn't remember everything one time.

Like I went there, and they started questioning me, sometimes everything don't come up one time until you go around and get a point. You just come up with the exact thing that he tell you.

Q. How many times were you questioned by a Board Agent in connection with what Harold Stark told you on that day? A. One time.

254 Q. Only once.

The time you gave the statement, which is – A. Yes.

Q. (Continuing) – Respondent's 6 for identification.

Am I right? A. Yes.

Q. Before coming here to testify, did you talk to any of the other fellows who had been fired, about what the case was about, and what Stark had said to you, and what you had said to Stark? A. The other fellows?

I don't see them.

Q. So you didn't talk to them? A. No.

I don't see them.

Q. Are you saying you didn't see any of the fellows who were fired, since the day they were fired? A. Yes.

I see them Labor Court, at 2 World Trade Center.

Q. What? A. 2 World Trade Center.

Q. About when was that? A. I don't know the exact time.

We been there quite a few times.

255 Q. How long after you had this conversation with Harold Stark on the day Peters was fired, did you meet the fellows who had been discharged, when you said you met them at the World Trade Center? A. Yes.

I met them –

Q. How long after?

I'm trying to find the time. A. That was the following –

He fired Peters, it was on either a Wednesday or Thursday. Then he had a week, on a Friday, I met them, and that's the time I heard they were drunk, because at first I didn't heard they were drunk.

Q. Now – A. That's the time – That's the time when I went over to World Trade Center, that's what I heard, they said, Harold Stark said they were drunk.

Q. Mr. Bishop, I'm trying to find out, and you correct me if I'm wrong, you're telling me about a week or two after Peters was fired, you went to the Labor Board at the Trade Center? A. He fired – Like he fired him this week.

Q. Yes? A. And we went there the other week, Friday to a hearing.

256 Q. You went a week later, Friday? A. Yes, to a hearing.

Q. That's the time you met some of these fellows who had been discharged? A. That's the time I met everybody who had been discharged.

Q. If I tell you that Peters was discharged May 17th –

Is that the date, Miss Johnson?

MS. JOHNSON: That's right.

Q. (Continuing) – of '73. So this meeting you went to at the Trade Center, was towards the end of May of 1973, am I right? A. Yes.

Q. That's the time you spoke to some of these fellows who had been fired? A. Yes.

Q. About the union, and about – A. I asked them about how they got fired.

Q. And they told you –

Did you tell them what Mr. Stark had told you on the day Peters was fired? A. I told them –

That's what my statement at the hearing?

Q. Right.

In May of 1973? A. Yes.

257 Q. Now, when you made this statement now, which is Respondent's Exhibit 6 for identification, which was in November of '73, that was months later, right? A. Yes.

Q. This is after you had had the conversation with the people who had been fired, because that took place in May you told us? A. Yes.

Q. And yet you never told the Board Agent about you were promised increases if you got out of the union? A. Well, isn't it on this paper here, that I promised vacation pay and –

Q. Mr. Witness – A. (Continuing) – and holidays pay and increases?

Q. Mr. Witness, I'm asking you again, you testified that Harold Stark on the day that Peters was fired, told you that you would get increases if you stepped out of the union? A. He tell me that.

Q. You're saying it's in this statement, that Harold Stark on the day that Peters was fired, told you this?

Is that what you're telling us now? A. Harold – On Harold Starks' statement, it didn't state up here. It state down here on Louie Passani's
258 statement.

Q. On Louie Passani's statement it's stated? A. All three guys tell me the same thing, but maybe I dropped a verse of what they say, but all three guys give me the same statement.

My brother give me the statements, Louie Passani give me the statement, and Harold Stark give me the statement.

Q. I'm asking you whether when you were questioned in November, 1973, by the Labor Board Agent, whether you told him that Harold Stark had told you on the day that Peters was fired, that if you got out of the union, you would get, what is it, more wages? A. I didn't told him that.

Q. You did not tell him that?

And the Board Agent, he asked you what Harold Stark had said to you, didn't he? A. Yes. He asked me.

Q. He asked you what you told Harold Stark, didn't he? A. Yes.

* * * * *

JUDGE SCHNEIDER: Mr. Katz, you referred to the witness' affidavit as Respondent's Exhibit 6.

Is there a Respondent's Exhibit 5?

259 MR. KATZ: I think, according to my notes, that's Evans' affidavit for identification.

JUDGE SCHNEIDER: I see.

MR. KATZ: As I say, I'll let the record speak for itself.

This is my keeping of the Exhibits.

JUDGE SCHNEIDER: Okay.

I just wanted to be sure.

What's the date of that affidavit?

MR. KATZ: November 1st, 1973.

JUDGE SCHNEIDER: Now, Mr. Bishop, I'm not certain whether your testimony was that you had one conversation with Harold Stark about the union, or whether you had two.

How many did you have any?

THE WITNESS: I had one.

JUDGE SCHNEIDER: Just one?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Well, now, this was a conversation which took place in the morning?

THE WITNESS: Yes, in the morning.

JUDGE SCHNEIDER: Well, now, when Miss Johnson was asking you questions, my notes indicate that you also said that you had a conversation one night after George Peters was fired.

260 Was I mistaken?

THE WITNESS: You're mistaken.

JUDGE SCHNEIDER: I see. All right.

* * * * *

MS. JOHNSON: Your Honor, I'd like to recall Kenroy Bishop for a brief question.

261 REDIRECT EXAMINATION

Q. (By Ms. Johnson) Mr. Bishop, after, sometime after the union meeting where you signed cards, were you present at a conversation between Harold Stark and Felipe Ortiz? A. Yes.

Q. Could you tell us when that conversation took place? A. It

was the same day that he fired him.

Q. Where were you? A. I was at George Peters – the building that he was a super in.

Q. Were you inside or outside? A. Outside.

Q. Who else was present? A. Louie Passani and Mrs. Peters.

Q. Do you remember anyone else being there? A. No, I don't remember anyone else.

JUDGE SCHNEIDER: Mrs. Peters?

THE WITNESS: Yes.

Q. Could you tell us about the conversation that you heard?

262 A. Well, I saw him start to come around, with Mrs. Peters. They come in the back of the building. Ortiz was in the basement. So he send Mrs. Peters in the basement to go and get Ortiz.

Q. Who is he? A. Harold Stark.

And he get him outside, and he come out.

On the side there was dog mess, and he ordered him to pick it up with his hand, and Mrs. Peters said no, you must get a shovel and a broom and pick it up.

And Harold Stark said no, with his hand.

And I turn and walk away when I see that and go in the basement. I didn't see nothing more.

Ortiz come and tell me that he fired him.

* * * * *

264 Now, I just want to be sure, Mr. Bishop, of your testimony.

Now, who ordered who to pick up the dog mess?

THE WITNESS: Harold Stark ordered Ortiz.

JUDGE SCHNEIDER: All right.

Q. (By Ms. Johnson) Did you hear it? A. Yes, I heard it.

JUDGE SCHNEIDER: Mr. Katz.

RECROSS EXAMINATION

Q. (By Mr. Katz) Mr. Bishop, a few minutes ago, when you were excused from the stand, you walked out of this room, didn't you? A. Yes.

Q. Did you talk to anybody about this Ortiz incident and dog mess?

Did you tell anybody about it, did anybody tell you anything about it?

A. No.

Q. Prior to today, did you ever tell anybody of the Labor Board that asked you questions, about this whole union problem, about Ortiz and the dog mess? A. Yes, I told her that I was there, Mrs. Johnson. I told

265 her I was there.

Q. At the time you gave the statement, when you were asked questions?

A. No.

Q. When did you tell it to her? A. The lawyer that take the statement from me, he didn't ask me nothing about it.

But they got heard from him, before they asked me. They can't ask me, if they don't heard who was there. They got to heard from Ortiz.

Do you understand?

Q. When did you talk --

First of all, who do you say you spoke to of the Labor Board in connection with Ortiz and this dog mess? A. Mrs. Johnson asked me if I was there.

Q. How long ago?

When is it that she asked you?

Give us the month and the year that you say she asked you about this.

A. She called me in, and asked me on the telephone.

Q. How long ago was it?

Was it a month ago, six months ago? A. I guess sometime in December.

Q. Of last year? A. Yes.

266 Q. She asked you this on the telephone? A. Yes.

She said she wanted me to come down and –

Q. And you came down to see her? A. Yes.

Q. Did she ask you questions? A. Yes.

Q. Did she write something down?

Did you sign a statement for her about that? A. About that?

No.

Q. Did she ask you questions?

She asked you questions, didn't she? A. Yes, she asked me.

MR. KATZ: I now call upon General Counsel, if they have a memo or a summary of a memo of this conversation with this witness, concerning this event.

MS. JOHNSON: I have no memo, no statement.

MR. KATZ: Does the General Counsel have any notes made contemporaneously at the time she interviewed this witness?

MS. JOHNSON: I have a personal work product.

MR. KATZ: I submit, by whatever label you call it, if it's the notes

267 taken as a result of the interview with this witness, that as cross examination, I should be entitled to it.

JUDGE SCHNEIDER: In what form are those notes?

MS. JOHNSON: We – Whenever we have a conversation related to a case, there's a chronological sheet that's kept, and I just write down the date of the conversation and what was said. This contains the whole file.

* * * * *

268 JUDGE SCHNEIDER: On the record.

Q. (By Mr. Katz) Mr. Bishop, you just related an incident on the day you say Ortiz was discharged? A. Yes.

Q. You referred to a Mr. Peters, the superintendent, or super?

A. Mrs. Peters.

Q. Mrs. Peters? A. Yes.

Q. My notes show, and you tell me if I'm wrong, that you said Mr. Peters, the super? A. Mr. Peters?

Q. Were you saying Mrs. Peters, the super? A. Didn't I tell you in the basement?

Mr. Peters is a man and his wife is a woman.

I said send her in the basement to get Ortiz.

Q. You referred to – A. Mistress.

Q. Mrs. Peters? A. Mrs. Peters.

Q. Is that the one you called the super? A. Well, both of them work as super.

Q. Both husband and wife, Mr. and Mrs. Peters, were the superintendent of the building? A. Yes.

269 * * * * *

272 Q. This incident that you related with respect to Mr. Ortiz, and the dog mess, who else was present besides Mrs. Peters and Harold Stark? A. Louie Passani and Ortiz, and Kenroy Bishop. That's me.

Q. Who else? A. Only Louie Passani –

Q. Anybody else present? A. Louie Passani, Harold Stark, Mrs. Peters, Ortiz and Kenroy Bishop.

That's all I saw there. I didn't see nobody else.

Q. Do you know Charles Plair? A. Charley Plair I know.

Q. He's a – Wasn't he there? A. No.

Q. You're sure he wasn't there? A. I didn't saw him.

Q. You didn't see him? A. No, I didn't saw him.

Q. Do you know Moultrie? A. Yes.

Q. Wasn't he there? A. Moultrie?

No, I didn't saw him.

273 Q. How long did you stay there during this incident? A. All day.

I was working there for the whole day.

Q. You just told us before that you walked away from it?

A. How long did I stay over the building?

Q. No.

In the incident when the people were talking about the dog mess –

A. When Mrs. Peters tell him to get a broom and I see that he insist to let him pick it up, I walk away.

Q. You walked away? A. Yes.

Q. How long were you away from there?

Where did you go? A. I went in the basement.

Q. How long did you stay in the basement? A. Well, I stayed in the basement a couple of minutes, and then Ortiz was down there, getting undressed to get out.

Q. When you say a couple of minutes, how much time do you mean?

A. Maybe about three minutes.

Q. So, three minutes after Harold Stark had this incident about the dog mess, Ortiz was getting out of the basement? A. No.

274 He come down in the basement.

They was outside to pick up the dog mess with his hand. And that's what I see, and that's exactly what I see. I can't tell you nothing more.

Q. I'm asking you again, sir, after you walked away – when you walked away, who did you leave standing there?

Who was there? A. Mrs. Peters.

Louie Passani wasn't even there; he was by the step looking out.

Q. Was Harold Stark there? A. Harold Stark, yes, he was there, standing over, and wanting him to pick it up with his hands.

Q. When you walked away into the basement, you still left Harold Stark standing there? A. Yes, I left him standing there.

Q. Who else was there?

Mrs. Peters was left standing there? A. Mrs. Peters, and Harold Stark.

Q. Was Ortego left standing there? A. Yes.

Q. Anybody else there, any other workers you left there? A. Louie Passani was by the step, looking out.

Q. Looking at what?

PAGE 275 MISSING

276 JUDGE SCHNEIDER: That would be May 16th?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Mrs. Johnson, what is the relevance of this incident to the allegations in the complaint?

MS. JOHNSON: Ortiz was discharged that day, and when Ortiz testifies, you will see how it fits into the whole picture.

JUDGE SCHNEIDER: I see. All right.

* * * * *

277 FELIPE ORTIZ

called as a witness, was duly sworn through the Interpreter, Frank Monti, and testified as follows:

JUDGE SCHNEIDER: Be seated, please.

Your name, sir?

THE INTERPRETER: Frank Monti,

Whereupon,

FRANK MONTI

called to interpret for the witness, Felipe Ortiz, was duly sworn by Judge Schneider.

DIRECT EXAMINATION

Q. (By Ms. Johnson) Please state your name and address for the record. A. (In English) Felipe Ortiz, 525 West 169.

MR. KATZ: If Your Honor pleases, it appears from the question just asked, which the witness himself just answered, there is no need for an interpreter.

278 I would suggest we follow the procedure of letting the witness make direct answers, and such time as it becomes necessary, we can then use the services of the interpreter.

* * * * *

279 Q. (By Ms. Johnson) Mr. Ortiz, are you currently employed?

A. I no speak English.

Q. Where do you work now? A. Now, Long Island City.

JUDGE SCHNEIDER: Just a minute.

Off the record.

(Discussion off the record.)

Q. (By Ms. Johnson) Mr. Ortiz, were you previously employed by Fred Stark? A. I no understand. I no –

Q. Did you use to work for Fred Stark, for Mr. Stark? A. Yes.

Q. What was your position? A. Porter.

Q. Where did you work? A. Porter.

Q. Were you assigned to a building? A. Sweep, mop. There was garbage outside.

Q. Where did you do this work? A. I –

Q. What building did you work at? A. 205 Jamaica Avenue.

Q. When did you start working for Mr. Stark? A. January 15th,

280 '73.

* * * * *

281 Q. (By Ms. Johnson) Who told you what to do when you came to work? A. I no understand.

282 JUDGE SCHNEIDER: The Interpreter, will you please put the question to him?

(Whereupon, the interpreter complies with Judge Schneider's request.)

A. My brother.

Q. Did your brother give you your work assignments everyday?

A. (Through Interpreter) He was with me for around two weeks, showing me the job.

Q. Who is your brother?

What is his name? What is his name? A. (Through Interpreter) Torres.

Q. Does he work for Mr. Stark? A. (Through Interpreter) He worked.

Q. After the two weeks when your brother gave you your assignments, who then told you what to do each day? A. (Through Interpreter) When he finished the job, well – I –

MR. KATZ: If it pleases the Court, one of the problems with the interpreter is, this witness has now made three or four responses.

I think it's incumbent upon the interpreter to give us each of these responses, rather than summarize it or pass it up, because I don't know whether it's important, or relevant or what significance it has.

283 I think, if we have an interpreter, he should, as the witness gives it, whatever the response is, relate it so it's in the record.

JUDGE SCHNEIDER: Mr. Interpreter, will you please comply with Mr. Katz' suggestion?

THE INTERPRETER: I normally do, but I didn't understand him. That's why I didn't.

If you want me to say I don't understand after each sentence, I will.

JUDGE SCHNEIDER: I think it would be well to be as literal as possible.

It seems to me now that the witness is much more literate in Spanish than in English, and under these circumstances, I will direct that further – the rest of the examination be conducted through the interpreter.

MS. JOHNSON: Did we get an answer to that question?

THE INTERPRETER: Did I hear an answer?

MS. JOHNSON: Yes.

THE INTERPRETER: I heard, "I stayed there working," and there was another phrase which I didn't understand.

(All testimony now through interpreter.)

284 Q. (By Ms. Johnson) What did you do when you came to work each morning? A. Well, I was mopping, I swept, threw out the garbage.

THE INTERPRETER: Something I didn't understand, about empty apartments. A. That. That.

Q. Who told you to do? A. Well, my brother brought me and showed me the job.

Q. After your brother left, who then told you what to do? A. Well, I already knew the job then.

Sometimes the super, Mrs. Peters gave me orders. Mrs. Peters.

Q. Did anyone check on your work? A. Mrs. Peters.

Q. Were you ever told your work was unsatisfactory? A. No.

Q. Were you ever disciplined? A. Well, I knew what to do and I – I knew the job. That's it.

Q. In the spring of 1973, was there a union organizing campaign among the employees? A. Yes.

Q. Did you attend a meeting? A. Yes.

285 Q. Did you attend a meeting? A. Yes.

Q. Did you sign a card?

THE INTERPRETER: The witness nodded yes.

MR. KATZ: I think the correct thing is he nodded up and down. To me that's yes. I don't know what it is to him.

JUDGE SCHNEIDER: Ask him to answer orally.

Q. What happened next, after that meeting? A. Well, we got together –

THE INTERPRETER: I think he said, "We got together on the roof."

I did understand, "We signed the cards."

Q. After the meeting, what happened next? A. Afterwards, nothing.

Q. Sometime after that meeting, did you have a conversation with Harold Stark? A. No.

Q. Was there a time when you left the company? A. That I left? No.

Q. Are you still working for Fred Stark? A. No.

Q. What happened? A. Well, one day Harold came. He told me
286 that I had to pick up –

THE INTERPRETER: Something dogs with the hands.

A. I told him no. That I couldn't pick up – that I couldn't pick up dog droppings with my hands. I told him that was not my job, by hand. That my job was to sweep and to throw out the garbage.

He told me, if not, go home.

MS. JOHNSON: No further questions.

Wait, one more question.

Q. (By Ms. Johnson) What did you do after that? A. We finished discussing and talking. We came to an agreement.

THE INTERPRETER: I didn't understand the first phrase.

Then I understand, if I was going to do the job. I said no.

A. He told me if not, to go home.

Q. What did you do then? A. I went home, and I reported to the union.

Q. Right after your conversation with Stark, where did you go?

A. After the incident was over?

I went to the union. I went to the union to give a complaint.

287 Q. Did you change your clothes? A. Yes. I changed my clothes.

Q. When you changed your clothese, did you talk to anyone?

A. Well, –

THE INTERPRETER: I didn't understand.

A. With him, I talked with him to see – I talked with him to see if we could make an agreement.

He said no. He insisted that it was no.

I did not want to quit.

THE INTERPRETER: I didn't understand the last part.

JUDGE SCHNEIDER: Who is him?

THE WITNESS: Told me to go.

JUDGE SCHNEIDER: Who is him?

THE WITNESS: Harold.

* * * * *

289 Q. (By Ms. Johnson) Did you speak to Kenroy Bishop after?

A. No. He was there.

Yes. Lunchtime it was.

We did not speak, no.

* * * * *

290 Q. (By Ms. Johnson) While you were changing your clothes, did you speak to Bishop? A. Well, –

THE INTERPRETER: I didn't understand the first phrase, and then he said, "I told him it wasn't my work."

I don't understand.

A. He told me once that that was not my job to –

THE INTERPRETER: I didn't understand, something with the hands.

A. He told me that wasn't my job. That I –

291 Q. What did you tell Bishop?

* * * * *

Q. (By Ms. Johnson) Did you have a conversation with Bishop, while you were changing your clothese? A. No. No conversation.

Q. Did you see him?

MR. KATZ: Is this an impeachment of their own witness?

This is the third time he said he had no conversation with Bishop.

JUDGE SCHNEIDER: He said he had no conversation with Bishop when he was changing his clothes.

He may have had a conversation some other time.

Overruled.

A. I didn't speak with him.

There was argumentation, but I didn't converse with him.

Q. Did you speak with Bishop –

Did Bishop say anything to you? A. Well, he told me that –

292 THE INTERPRETER: I don't understand.

A. That that wasn't my work.

THE INTERPRETER: I didn't understand a phrase, and that that wasn't my job, and I didn't understand the phrase after that.

A. That was the only thing we discussed, nothing else.

Q. Did Bishop say that was not your job? A. Well, yes.

He told me I didn't have to pick that up with my hands.

Q. When did he tell you that? A. After Harold called me. When I was changing my clothes, when I was going outside.

We argued about that, but there was no discussion. No conversation.

* * * * *

295 CROSS EXAMINATION

Q. (By Mr. Katz) Mr. Ortiz, did you, after May 16th, 1973, go to the unemployment insurance and make a claim for unemployment insurance?

A. Yes.

Q. In June of 1973, isn't it true that you were denied unemployment benefits because you quit your job without good cause?

Didn't they make such a ruling? A. No.

Q. Didn't you take an appeal from that ruling? A. An appeal? How?

296 Q. Didn't you sign a paper at the local unemployment insurance office saying that you wanted to appeal from the June 4th, 1973 decision?

A. No. I don't remember. No.

MR. KATZ: Can we have this marked for identification, please?

(Respondent's Exhibit 7 was received and marked for identification, of this date.)

MS. JOHNSON: Can I see this, please?

MR. KATZ: Yes.

I'll give you a copy.

Q. (By Mr. Katz) Mr. Witness, I show you Respondent's Exhibit 7 for identification and ask you, and it may be that the interpreter, unless you can read it yourself, will have to read it to you, and see whether it's not true that you received this decision dated June 4th, from the unemployment insurance division of the New York State Department of Labor? A. The unemployment office?

Q. Didn't you receive that decision which is Respondent's 7, from the unemployment office? A. No.

Q. Mr. Ortiz, on June 25th, 1973, didn't you appear at 500 Eighth Avenue, New York City, before the unemployment insurance referee section?

297 A. Yes.

Q. Weren't you there because you objected to your not getting unemployment insurance? A. I was there because – for a hearing, yes.

I went. I went there.

Q. Before you went to this hearing on June 25th, 1973, you went to the local office of the unemployment insurance to register? A. No.

I went once to see if they gave me a job, but after – I didn't go back any more, no more.

I got a job –

THE INTERPRETER: I don't understand this.

A. I wasn't very interested in getting the job. I didn't give any importance to unemployment. I got a job.

MR. KATZ: Just a moment, please.

(Whereupon, there was a short pause in the hearing.)

Q. (By Mr. Katz) Mr. Ortiz, when you went to the hearing before the unemployment insurance referee section, on June 25th, 1973, didn't the referee swear you in to tell the truth? A. Yes.

Q. And you were asked questions? A. Yes.

298 Q. Do you remember being asked by the referee at that time these questions.

Questions:

"Question. Did Harold hire you?

"Answer. Yes."

Do you remember that question being asked, and you making that answer?

A. Which?

Q. When you went to the hearing before the unemployment insurance, on June 25th, 1973, at 500 Eighth Avenue, before Referee James T. O'Donnell, you were asked questions? A. Well, yes.

Q. Did you give answers to those questions? A. I did answer.

Q. Do you remember being asked this question.

"Question. Did Harold hire you?"

And you answered, "Yes." A. If he employed me?

I don't remember.

Q. Do you remember being asked this question, and making the following answer:

"When he hired you, what did he tell you your job would be?

"Answer. Clean up."

299 Do you remember being asked that question and making that answer?

A. He didn't tell me anything.

My brother – I told my brother, and my brother brought me to the job and showed me.

* * * * *

Q. (By Mr. Katz) Referring to this hearing at the unemployment insurance, in June of last year, you were asked questions by the referee and the other people there, is that right? A. Only the judge. No one else asked me.

300 Q. You made answers to the questions that the judge there asked you?

A. Well, some questions that I could answer.

If not, no.

Q. Did the judge there ask you, "Did Harold hire you?" A. He is the boss. My brother brought me –

THE INTERPRETER: I don't understand.

A. He's the boss. He hired me.

Q. At this hearing before the unemployment insurance, do you remember the judge asking you, when he hired you, "What did he tell you your job would be?"

And you said, "Clean up." A. Porter. Porter.

Q. Do you remember being asked this question:

"Did you have to clean inside?" and you answered, "Outside." A. No. I – Inside.

THE INTERPRETER: I think it was building. The building.

Q. Do you remember being asked this question, "Did he tell you how to clean outside?" and you answered, "Outside." A. Well, yes.

In the garden.

301 THE INTERPRETER: Something, I didn't understand, the papers.

A. Taking –

THE INTERPRETER: Taking something away. I didn't understand the rest.

Q. Do you remember being asked this question, "Where the dogs dirty?" And your answer, "Yes." A. No.

Q. Do you remember being asked this question, "How to clean up where the dogs dirty?" and you answered, "Yes." A. No.

Q. Do you remember the judge then saying to you, "Yes, sir, wait a minute, when he hired you, did he tell you this?"

And your answer, "Yes." A. No.

Q. Do you remember the judge asking you this question, "When you were hired, did he tell you that you had to clean up," and you answered, "Clean up." A. Clean in the building, outside, in the garden.

THE INTERPRETER: Something I didn't understand.

A. No sidewalk.

Q. Do you remember the judge there asking you,

302 "Inside the building?"

You answering, "Inside, outside, everything."

Do you remember making that answer? A. Clean inside and outside.

THE INTERPRETER: Some words I didn't understand.

A. Porter. Cleaning outside. Sweeping, mopping.

THE INTERPRETER: Some other word I didn't understand.

A. Clean the building. Taking out the garbage. Garbage.

* * * * *

303 MS. JOHNSON: We will stipulate as to the unemployment transcript.

MR. KATZ: There's one more question on Page 10. There's one on 11 and 14.

Then we can get this in the form of a stipulation.

JUDGE SCHNEIDER: If it's only that he was asked those questions, and gave those answers, stipulate them. Becuase the witness is not going to help us with that, apparently.

MR. KATZ: As a result of our conversation, apparently a stipulation is

in order, that the questions and answers which I have read, with respect to the June 25th, 1973 hearing concerning Felipe Ortiz, at the unemployment insurance referee section, were asked by the, as he called it, judge, who's listed as a referee, and who made the answers which I have stated so far on the record, and in addition, he made the following questions and answers that were asked.

"Question. After you were hired, did you clean outside, too?"

304 "Answer. Outside, too."

Then on Page 11, "Question. Did they give you a shovel and a broom to clean inside?"

"Answer. Sometimes."

"Question. Did they give you a pail, too?"

"Answer. Pail, too."

Then on Page 14, this question by the referee.

"Let's get back again to the important part of this case.

'Can you tell why you refused to clean up the outside of the building on May 16th?"

"Answer. If you don't clean up, you have to go home, yes."

"Question. Dog dirt? Clean the papers, too, outside? He wanted you to clean? Did you clean up the papers?"

"Answer. Yes. Sometimes call."

"Question. That's sometimes on May 16th, did you clean up?"

"Answer. No."

* * * * *

305 JUDGE SCHNEIDER: Is the stipulation agreed to?

MS. JOHNSON: Yes.

I would like to say that we stipulate that the record was made, for whatever value it has.

MR. KATZ: While we're at it, I would like to show you a copy of the decision based on that hearing, and ask you whether you'll stipulate, so I don't

have to ask him, and he won't know, or whatever.

MS. JOHNSON: We'll stipulate that the decision was made, for whatever it's worth.

MR. KATZ: Why don't I have it marked, as Respondent's Exhibit No. 8?

MS. JOHNSON: Do you want to mark this, too?

MR. KATZ: I'd rather mark first the transcript of the unemployment insurance hearing of June 25th, 1973, as No. 8.

JUDGE SCHNEIDER: Do we need that, Mr. Katz?

306 MR. KATZ: Mrs. Johnson suggested.

I don't need it.

MS. JOHNSON: I just wanted to know if you wanted it marked.

MR. KATZ: I don't need it.

Let's mark the decision from the unemployment insurance referee section, dated July 5th, 1973.

JUDGE SCHNEIDER: That will be Respondent's Exhibit No. 8.

(Respondent's Exhibit 8 was received and marked for identification, of this date.)

JUDGE SCHNEIDER: Off the record.

(Discussion off the record.)

JUDGE SCHNEIDER: On the record.

Are you offering Respondent's Exhibit 8?

MR. KATZ: Yes, I am.

I would like to offer that and Respondent's 7. Both of them are marked for identification.

This is the first determination and --

JUDGE SCHNEIDER: Any objection?

MS. JOHNSON: No.

JUDGE SCHNEIDER: They're admitted.

(Whereupon the above referred to were received and marked Respondent's Exhibits 7 and 8 in evidence.)

Q. (By Mr. Katz) Mr. Ortiz, at the hearing before the unemployment
307 insurance, before the judge, in June of 1973, weren't you asked if you wanted an interpreter, and you said, no? A. They asked me. I told them no.

THE INTERPRETER: I didn't understand what he said after that.

MR. KATZ: May I now have marked as Respondent's 9, –

* * * * *

JUDGE SCHNEIDER: Let the record show that the witness got up, banged on the table, in an apparently angry manner. Got up and made a gesture, and now has sat down.

* * * * *

MR. KATZ: Can we ascertain if he's calm and cool, because I want to
308 ask him questions?

If not, we'll take a recess, perhaps.

JUDGE SCHNEIDER: Mr. Interpreter, will you ask him if he's ready to proceed with the questioning?

THE WITNESS: Yes. I'm working now. I don't care.

* * * * *

Q. (By Mr. Katz) Mr. Witness, do you want your job back at Stark?

* * * * *

JUDGE SCHNEIDER: Are you prepared to offer him his job back, Mr. Katz?

* * * * *

309 MR. KATZ: At this time, we're not prepared to make any such offer.

JUDGE SCHNEIDER: Very well.

MR. KATZ: I think I was at the stage where I was going to have this affidavit, Mr. Ortiz's affidavit, of November 1, 1973, marked for identification.

(Respondent's Exhibit 9 was received and marked for identification, of this date.)

Q. (By Mr. Katz) Who gave you orders and told you what to do in connection with your work at the building? A. In the building?

The super.

Q. Is that George Peters? A. No.

Mrs. Peters.

Q. Would you please show the witness Respondent's Exhibit 9 for identification, the sentence which says, "George Peters was the super for the two buildings, and he gave me my orders and told me what to do."

THE INTERPRETER: You want me to read it to him in Spanish?

MR. KATZ: You might, yes.

(Whereupon, the Interpreter translates the requested sentence to the witness.)

310 A. No.

Q. When he made that statement, did he read it before he signed it, or was it read to him? A. This one?

Yes.

Q. Was that statement –

Withdrawn.

Did you read the statement before you signed it? A. No.

Q. Was the statement read to you by somebody from the Labor Board, before you signed it? A. No.

I said Mrs. Peters.

Q. Did the Labor Board Agent ask you questions about who was the super of the building? A. Yes.

Q. Did he – Did you give him an answer? A. Yes.

Q. And he wrote it down on a piece of paper, Respondent's 9?

A. Yes.

Q. Did the Board Agent also ask you who gave you the orders and told you what to do at the building? A. He asked me.

Q. You gave him answers?

311 You told him? A. Yes.

Q. And he wrote it down on the paper? A. Yes.

Q. Would you please show the witness the part on the third page which says, "I have read the above statement." That sentence. Just before his signature.

(Whereupon, the Interpreter translates the requested sentence to the witness.)

A. Yes.

Q. Did you read that statement before you signed it? A. No. I didn't read it because of the language.

Q. Did you ask the Board Agent whose name appears on the bottom, to read it to you? A. He didn't read it to me, no.

Q. Did you ask the Board Agent who took the statement from you, that you'd like to have someone interpret it for you? A. To which?

Q. To this three page document. A. No.

Q. When you were being interviewed in connection with this statement, Respondent's No. 9, by the Labor Board Agent, did he ask you if any of the Starks had spoken to you about the union? A. Yes.

312 Mrs. Peters talked – Mr. Peters talked to me about the union.

Q. Mr. Ortiz, that is not what I was asking you.

What I am asking you is whether on November the 1st, 1973, when the Labor Board Agent, Bruce Kettler, K-E-T-T-L-E-R, interviewed you and talked to you, did he ask you at that time whether you had talked to any of the Starks about the union? A. Of the workers?

Q. No.

Did Mr. Kettler, the Labor Board Agent, ask you, Mr. Ortiz? A. He

asked me – He asked me if anyone had talked to me about the union.

I told him George Peters spoke to me about the union.

Q. Did the Board Agent ask you whether the Starks ever said anything to you about the union? A. No.

Q. He didn't ask you –

When you say no, do you mean the Board Agent did not ask you?

THE INTERPRETER: I am not understanding.

A. The one who filled that out for me asked me if anyone had spoken to me about the union.

313 I told him George Peters. He spoke to me as to whether I wanted to be into the union, in the union, if I liked the union.

I told him, yes, that I would like it. I like it.

Q. Did this Board Agent ask you if your boss, any of your bosses, spoke to you about the union? A. No.

Bosses, no.

Q. The bosses did not speak to him about the union? A. No. At no time, no.

Q. Well, on May 16th, the incident about the dog droppings, did Harold say you were fired? A. No.

He came over to me and told me to clean the dog droppings.

* * * * *

Q. (By Mr. Katz) After the incident took place, whatever it was, did Harold say to you that you were fired? A. Yes.

314 If I didn't do what he told me to do, I should go home.

Q. But did Harold – A. No more work.

Q. Did Harold say you were fired? A. Well, go home. Go home he told me.

Because I refused to pick up the dog droppings with my hands. I refused, I said no.

Go home.

Q. But isn't it true that Harold did not say you were fired? A. Yes. I went home.

* * * * *

MR. KATZ: Maybe I have some preliminaries in his affidavit. That's why I want precise words.

315 Mr. Interpreter, will you please show this Respondent's Exhibit No. 9 to the witness, and call his attention to the sentences which says, "Harold had told me to go home, but did not actually say I was fired."

(Whereupon, the Interpreter complied with Mr. Katz' request.)

A. He told me if I didn't do – He told me if I didn't do the job, to go home.

I didn't want to – He asked me to do that job, he insisted that I pick up the dog droppings – that I pick up the dog droppings with my hand, and I went home.

* * * * *

316 MARIE PETERS

called as a witness, was duly sworn and testified as follows:

JUDGE SCHNEIDER: Be seated, please, ma'am.

Q. (By Ms. Johnson) Please state your name and address for the record?

A. Mrs. Marie Peters, 139-06 34th Road, Flushing.

Q. Did you formerly live at 201-15 Jamaica Avenue, Queens, New York.

A. Yes, I did.

I was the super there.

Q. Did there come a time in the spring of 1973, when Harold Stark

317 came to your apartment? A. Yes.

Q. What did he say to you? A. That was on May 16th.

Q. What did he say to you? A. He came over my apartment, wanted to know if I knew where Phil Ortiz was.

I said, yes, sir, he's down the basement. He asked me to go and get him.

We brought him up and we were talking in the back. And Harold Stark asked Ortiz if he'd pick up the dog manure with his hands. And Ortiz said, no, I want to get a shovel and broom, and Harold said, no, you pick it up with your hands.

So, Ortiz says no, I want to go downstairs and get a shovel and broom. Because I even said myself, even told Ortiz to get a shovel and broom and Harold says no. He says you pick it up with your hands.

Q. Who else was present that day? A. Bishop was there, myself, Harold Stark and I think Louie, some guy by the name of Louie.

Q. You don't know his last name? A. I don't know his last name.

Q. Where were you exactly standing?

Where was this conversation taking place? A. Right around the back

318 of the apartment there.

Q. Is that the one you used to live in? A. Yes.

201-15. Right around the corner in back of the building.

Q. Was anything else said in that conversation? A. Then after Harold says to Bishop, I mean Ortiz, if you don't pick it up with your hands, he says you're fired, go home. And that's what Harold Stark told Ortiz.

Q. Did Ortiz say anything then? A. No.

Well, he went downstairs. About ten minutes later he came back upstairs, and he come in my apartment and he spoke to my husband.

What he spoke about, I don't know, because I stepped out for a few minutes. I had to go to the store.

MS. JOHNSON: I have no further questions.

MR. KATZ: Do you have an affidavit for Mrs. Peters?

* * * * *

319 CROSS EXAMINATION

Q. (By Mr. Katz) Mrs. Peters, were you in the room when Felipe Ortiz testified earlier this morning? A. Here?

Q. Here. A. Yes.

I was sitting right over there in the corner.

Q. And you heard his testimony? A. Yes, I did.

Q. Is that the same fellow who was involved in the incident with the dog droppings? A. That's right. Felipe Ortiz.

Q. You testified when General Counsel for the Board asked you, you say you heard Harold Stark tell Felipe Ortiz, you're fired? A. I was right there, when I heard Harold Stark say it.

Q. You heard him use the words, you're fired?

He said, you're fired, go home? A. I was right there.

Q. Did you hear Mr. Ortiz earlier this morning say that Mr. Stark did not use the words, you're fired? A. May I tell you something?

320 Q. May I finish? A. You want to finish first, go ahead.

It's a little hard to understand him. I know what he's talking about.

Q. In other words, you understood him from what he said on the stand here this morning, to mean that Mr. Stark used the words, you're fired?

A. That's what Harold Stark says to Ortiz.

He says, you're fired, go home. I was right there.

Q. You're absolutely certain? A. I was right there when he said it. I'll tell you again.

Q. Then when Ortiz testified this morning that Mr. Stark did not use the words, you're fired, Mr. Ortiz was –

MS. JOHNSON: Objection.

Q. (Continuing) – was wrong?

MS. JOHNSON: Objection.

JUDGE SCHNEIDER: Basis?

MS. JOHNSON: He's asking the witness to speculate on what Mr. Ortiz – the record will speak for itself on it.

Whether or not –

MR. KATZ: This is cross examination.

JUDGE SCHNEIDER: Overruled.

321 The question is whether or not the witness thinks that Ortiz was wrong, if he said that –

MR. KATZ: Harold Stark did not say the words, you're fired.

Q. Would you answer that, please? A. I'm telling you that's what he said, he said, you're fired, go home.

How many times do I have to repeat myself?

Q. Do you realize, Mrs. Peters, you're a witness here? A. Yes.

Q. And your obligation is to answer questions? A. I do.

But I'm telling you what Harold Stark says.

Q. You just used the comment, how many times do you have to repeat yourself? A. I know.

But he said, you're fired, go home.

Q. Now, on this day, when this incident occurred, where was your husband? A. On May 16th?

Q. Yes, May 16th, 1973, talking about the incident with respect to Felipe Ortiz and the dog droppings.

Do you know where your husband was that day? A. I can't remember right at this minute.

Q. Well, would it help you to remember if I told you that he was out

322 with one of the crew doing work? A. Probably so. You're probably right there.

Q. And generally, what is his regular working hours for the Starks?

A. Mr. Stark hired him as a foreman.

Q. As a foreman, he would direct the work of other people? A. Mr. Stark would come to my apartment seven o'clock in the morning and pick up my husband, and bring – come over at seven o'clock in the morning.

* * * * *

Q. (By Mr. Katz) As a foreman, would your husband give orders to some of the laborers around? A. Yes.

He had quite a few boys under him.

* * * * *

324 Can you recall any incident when your husband fired someone for not doing their work properly?

* * * * *

A. I don't know.

Q. How long was your husband employed by the Starks? A. When did he start?

Q. Yes, when did he start. A. Around October the 1st of '71.

Q. And he worked until May 17th of '73? A. That's right.

325 Q. He worked a little over two years? A. That's right.

Q. That entire period, you're telling me you don't have any knowledge of his having discharged anybody for doing their work improperly? A. I don't know.

Q. Did you hear testimony from witnesses the other day that there was a meeting in the apartment occupied by you and your husband on April 30th, 1973? A. That's right.

Q. Were you present? A. Yes, I was.

Q. Did you sign a card for the union? A. I did not.

Q. Did you see any of the other people present sign cards?

A. Yes. I saw them.

They signed a white card.

Q. You personally saw it? A. Yes, I did.

Q. How many people did you personally see sign cards? A. There were six, besides my husband, seven.

Q. You saw all seven sign cards? A. Yes, yes.

MR. KATZ: May we have her affidavit, the affidavit of November the

326 9th, 1973, marked as Respondent's 10, please?

(Respondent's Exhibit 10 was received and marked for identification, of this date.)

Q. (By Mr. Katz) Now, Mrs. Peters, do you remember being interviewed on November 9th, 1973, by Elizabeth K. Johnson, the Board Attorney who's representing General Counsel now? A. Repeat that again.

Q. Do you recall your being interviewed on November 9th, 1973, by Elizabeth K. Johnson? A. Yes.

Q. An N.L.R.B. Board Attorney who's here today? A. She's right there.

Q. She asked you questions? A. That's right.

Q. And you gave her answers? A. Right.

Q. Did she ask you what happened with respect to the meeting of April 30th? A. She did.

Q. You told her on that day what you knew about it? A. That's right.

Q. Did she ask you among the questions, whether you saw all the people present sign union cards? A. She asked me.

327 Q. You gave her an answer? A. Yes, I did.

Q. That answer was truthful when you gave it to her? A. Yes. I told her.

Q. You told her the truth, didn't you? A. Yes.

Q. She wrote it down? A. She wrote it down.

Q. And I show you Respondent's Exhibit No. 10 for identification, and ask you whether that's your signature on the last page? A. Yes, it is.

Q. Did you read it before you signed it? A. Yes, I did.

Q. Let me call to your attention on Page 2, the part – A. I can't see without my glasses.

Q. Do you want to get your glasses? A. Yes.

MR. KATZ: Is it all right, Your Honor?

JUDGE SCHNEIDER: Certainly.

Q. I would like to direct your attention to the part where you say, "I remember the men talking about signing cards for the union." A. Right.

328 Q. "I saw some men sign cards, but I am not sure who I saw sign." A. But this part I want to have corrected.

Q. You want to have it corrected? A. Yes.

Because I know the men who signed the cards.

Q. Did you know it in November, when you were talking to Miss Johnson? A. I know there's two I left out, I'm pretty sure.

Q. Did you know the information that you say you now want to have corrected, did you know it in November, when you spoke to Miss Johnson? A. At that time, I didn't.

Q. Well, when for the first time after November, did this come to your attention, that you got this information, that you want corrected? A. What do you mean?

Q. You're telling us now that this sentence, "I saw some men sign cards, but I am not sure who I saw sign," that you want that sentence corrected. A. Okay.

Q. I'm asking you –

JUDGE SCHNEIDER: Was there an answer to the question?

Q. You mean yes?

329 Do you or don't you want that sentence corrected? A. I do want that corrected.

Because it was April the 30th that they all signed the cards for the union.

Q. But that – A. And –

Q. I'm sorry, I didn't want to interrupt you. A. I know there was, I think I left one or two – two guys out.

Q. Who were at the meeting? A. Yes.

Q. But for those names that you listed in this affidavit, are you now saying that you want to correct your affidavit to say that you personally saw each one of them sign? A. I saw them sign cards, yes.

Q. Everyone of those? A. In my apartment, yes.

Q. What I want to ask you, when after November 1st, when you gave this statement, did you get the information that you had seen everybody sign, and you wanted to correct the statement? A. I don't remember.

Q. Well, let me ask you this.

After November 1st, 1973, did you call up Miss Johnson of the Board
330 or anybody from the Labor Board, and say there was something in my statement I wanted to change? A. No, I did not.

Q. Up to this very day, you haven't – A. I did not.

I didn't call the union.

Q. Miss Johnson is with the Labor Board, not with the union. A. I didn't call.

Q. You did not? A. No.

Q. You didn't tell anybody from the Labor Board that there was something in here that you say is now incorrect? A. No, I didn't tell her.

Q. And you wanted to change it?

JUDGE SCHNEIDER: The answer is no?

THE WITNESS: No.

Q. Mrs. Peters, were you ever employed by the Respondents here, that's the Starks, or anyone of their corporations? A. Yes, I was.

Q. You say that happened in October of '71? A. That's right.

331 Q. Please tell me at what salary you say you were hired? A. It was $60.00 a week.

Q. Well, after you finished the first week of work, did you get any – A. I never got paid.

Q. You never got paid? A. I did not.

Q. In all the time – A. I never got paid.

Q. May I finish?

In all the time from October 1st, 1971 to the day your husband's employment was terminated in May of '73, you never got paid? A. I did not.

I'm telling you the truth, I never got paid.

Q. From time to time, did Harold Stark visit the building in which Ortiz was employed as a porter, and tell him, give him instructions to do certain things? A. I would give him instructions what to do.

* * * * *

332 A. Did Harold Stark come around, is that what you're saying?

Q. Yes. A. He would come around once in a while, but as a rule, I gave Ortiz instructions what to do.

Q. But there were times when Harold Stark came around and gave instructions to Ortiz for work to do? A. Maybe once in a while, but usually I gave instructions.

Q. On the day of this incident of the dog droppings, about what time of the day was it that Harold Stark came to the premises, where Ortiz was working? A. Must be between 12:00 and 12:30.

Q. Then Ortiz had a conversation with Harold Stark, and you were there when this went on? A. I was there.

Q. Was – I withdraw that.

Do you know Charles Blair? A. Do I know Charles Blair?

Q. Yes. A. I can't recall that name.

Q. Do you know a fellow by the name of Charley, that worked for the Starks? A. Charley, yes, I know him.

Q. Was Charley there at the time of this incident, about the dog drop-

333 pings? A. He was not.

Q. Do you know Mr. Moultrie? A. Yes, I know him.

Q. Was he there, on – A. I did not –

Q. May I finish, please? A. Go ahead.

Q. Was he there on the day in question, concerning the dog droppings? A. I did not see Moultrie there at all.

Q. You were outside there where Harold Stark was talking? A. That's right.

But I did not see Charley, I did not see Moultrie there.

Q. Will you please tell us now what Harold Stark told Ortiz with respect to the dog droppings? A. You want me to go through the whole thing again?

Q. This is what we call cross examination, Mrs. Peters. A. All right.

Harold came over, it was on May –

Q. I didn't – We got the date and there's no question about it.

Just, please, tell us, if you will, what Harold said to Felipe Ortiz.

334 A. All right.

JUDGE SCHNEIDER: That's all you want to know, or not the whole incident?

MR. KATZ: Just step by step.

THE WITNESS: Harold Stark came in my apartment and asked me if I knew where Felipe Ortiz was. I said he was down the basement. He asked me to get him.

I went down the stairs, I brought him upstairs, around the back, and there was – there's where this thing took place.

And he asked Felipe Ortiz to pick it up with his hands. He says no.

Q. Pick up what? A. Pick up the dog manure with his hands. And he says no, I want to get a shovel and broom.

Harold Stark says no, you pick it up right now. And I even says to him, let him get a shovel and broom. He says no. Pick it up right now. He says, if you don't pick it up right now, as of now, you are fired, go home.

Q. You're absolutely certain that Harold Stark told Mr. Ortiz, in your presence, pick up this dog manure, with your hands? A. Yes, he did.

I was there.

335 Q. Now, when Miss Johnson was asking you questions in November of 1973, concerning this dog manure incident, you told her, did you, or did you not – A. I told Mrs. Johnson –

Q. Exactly what you're telling us now? A. That's right.

Q. That Harold Stark told him to pick it up with his hands? A. That's right.

With his hands.

Q. You told it to her? A. I told Mrs. Johnson.

Q. Let me show you your affidavit, Respondent's Exhibit 10, and direct your attention to Page 3, where you said, "Harold Stark told Ortiz to pick up the dog manure. Ortiz said, I want to go get the shovel and broom. Harold Stark said, "No, do it now."

Ortiz said, "No, I have to get a shovel and a broom."

Harold Stark said, "If you're not going to pick it up now, you are fired, go home."

Did you read this before you signed it, this affidavit? A. Yes, I did.

Q. Did you tell Miss Johnson about this – Did you tell her pick it up

336 with his hands is missing? A. Yes, I told Mrs. Johnson about this.

Q. What did she tell you, it's not important? A. I can't remember right now what she said.

Q. But you brought it to her attention? A. That's right.

Q. You told her she should put that in, it was missing in the statement? A. I know I did tell Mrs. Johnson about this.

Q. When you say this – A. About this right here.

Q. Stop telling Ortiz to pick up the dog manure with his hands? A. Right.

Q. You read the statement and it's not in there? A. It's not in there, but that's exactly what I told Mrs. Johnson.

Q. Did she say to you anything about let's make a correction?

A. No. Not that I can remember.

Q. Let me show you your affidavit and call your attention to the same page 3, several lines above it, where something is crossed out.

Are those your initials, M.P.? A. That's right.

337 Q. Let me show you the next page, Page 4, about the middle of the page, where something is crossed out and your initials. Those are – You put them on there? A. Yes.

Q. Where was –

I'll withdraw that.

Did you hear Mr. Bishop testify earlier today? A. Yes.

Q. You know Mr. Bishop? A. Yes, I do.

Q. Where was Mr. Bishop when this conversation was going on, between Ortiz and Harold Stark, and you say you were there, and you heard it?

A. He was standing right there with us.

Q. He was standing right with you? A. He was right there.

Q. How far away was he, or was he part of the crowd?

A. Couldn't have been too far.

Q. When you say, too far – A. I couldn't give you exactly how far.

Q. When you say he was not too far, how many feet or how many yards? Give us your best approximation. A. Maybe about from where I am, and from where the Judge is sitting.

338 MR. KATZ: Can we agree that's about six feet?

JUDGE SCHNEIDER: Six feet.

MR. KATZ: Okay.

Q. Did you hear Mr. Bishop's testimony earlier today, that Ortiz came

down after this talk with Harold Stark, and spoke to him?

You heard it? A. I was sitting here, wasn't I?

Q. I'm asking you whether you heard it.

JUDGE SCHNEIDER: Just answer the question. A. Yes.

Q. This incident with Harold Stark concerning the dog droppings, didn't this happen near the back gate? A. Around the back of the building.

Q. The back gate, near the parking lot? A. 201-15, near the parking lot.

Q. In the back yard, near the parking lot? A. Yes.

Q. Wasn't Louie Passani also there? A. I'm pretty sure he was.

Q. When you were interviewed by Miss Johnson, and you gave your statement in November, did you tell her that he was also present, or did you forget that? A. I didn't tell her this.

339 Q. Before you signed the statement, did you bring it to Miss Johnson's attention, that it wasn't in here, and he was there? A. No.

Q. Did you ever tell the Starks that employees were drunk, and couldn't do their work? A. Yes.

It was Charley and Lionel, they were always drunk on the job.

I don't care what Harold Stark says, because I called many times and told him they were drunk on the job.

When they go back, they send him back again.

Many times I seen them drunk, Charley and Lionel.

How many times have I found their bottles down the basement, have to take them out, bag after bag, of Swiss-Up bottles.

It's a cheap wine, and Harold Stark knows that, too, and Mr. Stark also knows it, because I've told him about it.

MR. KATZ: No further questions.

MS. JOHNSON: No questions.

JUDGE SCHNEIDER: Mrs. Peters, in answer to some questions by Mr. Katz, about the affidavit which you signed, concerning some statements in there relating to who signed cards at the April 30th meeting, –

340 THE WITNESS: You want to know the names, Your Honor?

JUDGE SCHNEIDER: No.

My question is, you said at that time that you wanted to correct some statements in there?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Now, what statements is it that you wanted corrected?

THE WITNESS: I left out one thought, that's what I wanted.

I left out Bishop. The day that they signed the cards for the union.

JUDGE SCHNEIDER: May I have the statement, please?

MR. KATZ: Sure.

Do you want me to point out --

JUDGE SCHNEIDER: Yes, I'd like to know what portion of the statement it is.

MR. KATZ: This is the statement that I was talking about.

JUDGE SCHNEIDER: Now, is this the part you referred to, Mrs. Peters, I'm reading, "I saw some men sign cards, but I am not sure who I saw sign."

Is that the sentence you want corrected?

341 THE WITNESS: Up here I have my husband and I have Wayne Huff and Jeff and Roger.

I have here, my husband, Wayne Huff, Jeff, Roger and Felipe Ortiz and Jimmy, and I forgot I have Roger in here.

JUDGE SCHNEIDER: At what point in here do you want to put the name Roger?

THE WITNESS: You mean I can put his name in here?

JUDGE SCHNEIDER: I want to know where you left him out?

It's Roger you're talking about?

THE WITNESS: Yes.

I left him out.

JUDGE SCHNEIDER: Where did you leave him out?

What part of the statement?

THE WITNESS: About signing the cards for the union.

See?

JUDGE SCHNEIDER: You don't give the names of anybody who signed the cards for the union.

THE WITNESS: I have them here. My husband, George Peters, Wayne Huff, Jeff, Roger, Felipe Ortiz and Jimmy.

342 JUDGE SCHNEIDER: You say up there, "Several of the men who worked with my husband were present."

THE WITNESS: Yes.

JUDGE SCHNEIDER: As well as my husband, George Peters."

THE WITNESS: Yes.

JUDGE SCHNEIDER: "And the men were Wayne Huff, Jess, Roger, Felipe Ortiz and Jimmy."

THE WITNESS: Yes.

JUDGE SCHNEIDER: But you don't say there that they signed cards. All you say there is that they were present.

THE WITNESS: They all signed cards.

JUDGE SCHNEIDER: Well, my question is, where did you – do you know that statement say – in that statement say that those men signed cards?

That was Mr. Katz' question.

You said you wanted it corrected. I'm trying to find out what you want corrected in it.

THE WITNESS: I have up here, "Sometime in April or May –" That was in April 30th that there was an investigation, investigator was at our house.

JUDGE SCHNEIDER: Well, is there anything in that paragraph that you say now is not true? Or is not accurate?

343 Perhaps we can get at it that way.

THE WITNESS: I think it's all right.

JUDGE SCHNEIDER: You think it's accurate?

THE WITNESS: Yes.

JUDGE SCHNEIDER: In that paragraph, there is nothing to correct at the present time, is that correct, if I understand you?

THE WITNESS: Yes.

JUDGE SCHNEIDER: That's all I wanted to know.

THE WITNESS: Do you want there?

JUDGE SCHNEIDER: Yes.

MR. KATZ: May I – I'm sorry?

JUDGE SCHNEIDER: Surely.

That's all I have.

Q. (By Mr. Katz) Mrs. Peters, on this affidavit, the bottom of the second page, where you say, "I saw – "

I withdraw that.

Did you see all the men who were at that meeting sign cards? A. Yes, I did.

Q. You say you told Miss Johnson in November, when you gave her this affidavit, that you saw all the men sign? A. I saw the men sign the

344 cards.

Q. You told this to Miss Johnson, when she asked you that in November of 1973? A. Yes.

Q. I call your attention to the sentence in your affidavit, where you say, "I saw some men sign cards, but I am not sure who I saw sign."

A. That's right.

Q. Isn't that the sentence you want corrected? A. It all depends

how you mean.

Which way do you want me to –

Q. I don't want you to have it anyway, Mrs. Peters.

I'm just asking you, in view of your testimony that you saw all the people who were there sign cards, – A. Yes, I did.

Q. And in the statement that you gave in November, you stated that you – A. All right.

Q. (Continuing) – you saw some men sign cards, but I am not sure who I saw sign. A. But, can you remember everything?

You can't.

* * * * *

345 GEORGE PETERS

called as a witness, was duly sworn and testified as follows:

346 JUDGE SCHNEIDER: Be seated, please, sir.

DIRECT EXAMINATION

Q. (By Ms. Johnson) Please state your name and address for the record? A. My name is George Peters.

I live at 139-06 34th Road, Flushing, New York.

Q. Are you currently employed? A. No, I'm not.

Q. Were you previously employed by Fred Stark at 198-10 Jamaica Avenue, Queens, New York? A. Yes, I was.

Q. What was your position? A. I was hired the week before October 1st, 1971, as foreman and me and my wife, to be supers at 201-05 Jamaica Avenue, and she was to receive so much money and I was supposed to receive so much money.

Q. Who gave you your work assignments? A. Mr. Fred Stark would give me my assignment.

He'd pick me up at seven a.m. every morning.

Q. Was your work ever criticized? A. No, it was never.

Q. In the spring of 1973, was there a union organizing drive among the employees of Fred Stark? A. There was.

Q. Would you tell us about that, please? A. Well, I had one time
347 gone to, spoken to one of the men, first, Charles Thompson, and he told me about Arlington joining the union, or forming a union of some sort, and I had, the following week or the week after, gone to Arlington, and I spoke to this one party over there, in reference to the union, and he gave me a telephone to call Local 32B, if I wished to get in touch with him.

Which I did. And we made – I spoke to Mr. Anthony Puccio, and he told me how many men want to join, and he made an appointment to get all the men together that wanted to join, and he'll be at my apartment on April the 30th, 1973.

Q. Did the meeting take place? A. It took place at my apartment.

Q. Did you sign a card? A. I signed and the other six men signed the cards.

Q. After that meeting, do you recall having a conversation with Fred Stark? A. I had a conversation with Fred Stark, not until May of – May 14th.

See, I was ill for about a week, and I had gone back after being ill, on May 14th, and he gave me my duties, and I took two men, went down to 145th Street and Jamaica Avenue.

348 Between twelve and one, I don't know exact time, Mr. Fred Stark and his son, Harold, came down there. Fred Stark pulled me over to the side, by the truck, and he spoke to me.

Q. What did he say to you? A. He told me, he says that I fired four of your men.

I says, what do you mean four of my men?

And then he gave out the names of the four men that he fired.

Q. Could you state the names, please? A. Yes. He fired Charles

Thompson, Roger Evans, and Wayne Huff, and Jeff, I can't pronounce his last name. He fired all – those four men.

So, he talked on, and then he told me, he says I'm surprised at you, Mr. Peters, you're supposed to be my foreman, you know, you're not supposed to be joining a union like, and you stabbed me in the back. Here you join a union, and the other men join a union, and he says, then he says to me he says look, I'll forget all about it with you, you can go back to work, and just stay away from the union.

I says, well, think about it, and that's about all that discussion was about.

Q. Later, after this conversation, did you have any further conversations with Fred Stark? A. Yes.

On – After Tuesday, I went – I finished the day's work, and then Tuesday, he picked me up for work again, and Tuesday night, when I brought the truck back, two or three men, I'm not exactly sure how many I took, and I went into Fred Stark's office, and I told him I would not be in on Wednesday, May the 16th.

He said why not.

So, after being warned to stay away from the union, I told him I'm going down – I'm going to see about my – I'm spitting blood, I'm going to the Veterans' Administration Hospital over there.

And he says make sure you stay away from the union. I did not answer him, I just went out.

JUDGE SCHNEIDER: Which Stark was this?

THE WITNESS: Fred Stark.

Q. Where did you go on May 16th? A. On May 16th, Roger Evans and Charley Thompson, Wayne Huff and Jeff, came to my building, and we got into my car, which was parked in back of the building, No. 1 space, and we went down to the union, on May 16th. We left around eight, 8:30 of that morning. And we made affidavits to the effect of what they were fired for,

and what was conveyed to me by Mr. Fred Stark.

Q. After that, on Wednesday, did you have a conversation with Felipe
350 Ortiz? A. Well, after returning from the union, which I dropped off the men, Wayne Huff and Jeff, I dropped them off at Francis Lewis Boulevard, I came to my apartment. I'm not positive, it's between 12:30, 12:30, one o'clock, somewheres around there I was in the apartment.

But I was there when Harold Stark came and rang the bell, and asked my wife to go get Felipe Ortiz.

Now, I don't know what occurred until about a half an hour, maybe even longer, I'm not exactly sure of the time, but I would say about half an hour later, Felipe – First my wife came in, and about a minute or two, five minutes at the most, Felipe Ortiz came to the apartment and handed me the key, because he – my wife gives him the key to open the door to the basement every morning. Gave me the key to the basement. Then he started conveying to me –

Q. What did he say? A. Felipe Ortiz started telling me that Harold Stark had told my wife, you know, to come and get him, and that Harold Stark wanted him to pick up the manure from the side of the building, and not in back of the yard, as was stated, because it's nothing but concrete there.

On the side of the building there are bushes, and this is where the dog
351 manure is. All around the building there are bushes.

Now, he told him to pick this with his hand. Not to use –

Q. Is this what Ortiz told you? A. Felipe Ortiz wanted, and my wife wanted, this is what was conveyed to me, Felipe Ortiz says, I want to pick it up with a shovel and a broom. You know, he speaks a little off language.

I told him, no, not with your hands. He says, that Harold told me to pick it up with the hands.

I said, well, what happened, did my wife say anything? Yes, she told him the same thing, that I shouldn't pick it up with my hands.

So what happened, I told him. He told me to go home, I'm fired.

Q. Did you have any conversations after that, then, with Fred Stark that you can recall? A. This was on May 16th.

On May 17th, I returned to work. At 7:00 a. m., he picked me up again, which he always does with his car, Cadillac, and we go to the office, and he opens the office up. But this particular day, his son came with us. He picked us up, too, him and Harold – Fred Stark and Harold. We went to the office and opened it up. He opened it up.

352 We no sooner got inside the doorway, when Fred Stark tells me, he says I see you went to the union again yesterday. I told you to stay away from the union. He says, evidentally, Mr. Peters, you don't learn. He says, you're fired. Give me all your keys.

I gave him all my keys, I left. The man hasn't paid me yet. The last time I was paid was May 4th, and I have – I was fired on May 17th. I never received payment for those weeks. I went home.

* * * * *

353 CROSS EXAMINATION

Q. (By Mr. Katz) Mr. Peters, you testified that on May the 16th of 1973, pursuant to an appointment that you had made prior thereto, you took the four people who had been discharged on May 11th, to the union?

A. That's correct.

Q. How did you fellows get to the union? A. With my car.

It was parked in back of the apartment house.

Q. What time was the appointment at the union? A. They opened up at nine.

Q. What time did you make the appointment for? A. For that morning of May 16th.

Q. What time in the morning? A. Nine o'clock they open up.

Q. Are you saying then, you made an appointment for nine o'clock? A. That's correct. Around nine o'clock, 9:00 a.m.

Q. You testified that you generally started to work about 7:30 in the
354 morning? A. Mr. Stark would pick me up between a quarter to seven and seven o'clock every morning.

Q. What time would you regularly start work? A. Regularly start to work?

Q. Yes. A. Well, myself and some of the men that would come early, would start right away.

Q. When you say, right away, a quarter to eight? A. A quarter after seven, ten after seven, if they'd come in.

He would put them right to work.

Q. The four men that you took down, did you meet them at one central point, or did you go to various places to pick them up? A. They came to my apartment.

Q. All four came to your apartment? A. All four came to my apartment.

Q. Then you went down to the union? A. I drove them down to the union, correct.

Q. Do you know where the union is? A. I certainly do.

Q. Where is it, sir? A. It's on 35th Street.

Q. In what borough? A. Manhattan.

355 Q. How long were you and the four men there? A. Approximately, I believe we left around – between eleven, I would say, and maybe 11:15, somewhere around there. 11:30. Between 11:00 and 11:30, we'll say. Approximately, I didn't look at my clock.

Q. When you left the union office, did the other four men go with you? A. Yes.

Q. Where did you take them, if anyplace? A. I dropped, first I dropped Roger Evans.

Q. Where did you drop him? A. At their home.

Q. Where is that, what borough? A. On the way home.

Queens.

Not too far from me. Rego Park it's considered.

Q. What did you do after you dropped him off? A. Then I went and dropped the other two men at Francis Lewis Boulevard.

Q. That's in Queens, also? A. That's about three – one, two – about two blocks, and two blocks left. About four blocks away from me.

Q. What did you do with respect to the fourth man? A. What fourth man?

356 Q. Wasn't there a – A. Those two and the two.

Q. You dropped two and two? A. Right.

Q. How long did it take you to, from the time you left the union office,– I'll withdraw that.

When you got to the union office that morning, where did you park your car? A. I parked my car in one of those parking lots.

I think I paid –

Q. How far away from the union office was it? A. Maybe a block away, tops.

Q. So when you finished your appointment at the union, between 11:00 and 11:30, you walked a block and got your car? A. Right.

Q. And then you dropped the men off? A. That's right.

Q. How long did it take you, from the time you left the union office, until you dropped off the last of the four men? A. Well, I would say I got there around 12:30 or a quarter after twelve. Between, I got there between, I would say, a quarter after twelve to about a quarter to one or 12:30, or what-

357 ever it was. Somewhere around that time. I didn't look at my clock.

Q. When you say you got there, you got where? A. I got to my house around, between, about 12:30, I would say. Around 12:30.

Specific time, I cannot give you.

Q. Now, this day of May 16th, that was supposed to be a regular working day for you, is that correct? A. That's correct.

Q. On that day, did you see Harold Stark? A. I saw nobody.

Q. You had told the Starks prior to May 16th – A. Not the Starks.

Fred Stark.

Q. I stand corrected. A. All right.

Q. You had told Fred Stark prior to May 16th, that you were going to go to the Veterans' Administration? A. That's correct.

I was taking the day off, I wouldn't be in that day.

Q. Actually, you knew already, you had made an appointment to go to the union two days before? A. That's correct.

I made the appointment on May 14th.

Q. You didn't want him to know that you were going to union, is
358 that right? A. After being forewarned, of course not.

Q. After May 16th, didn't Mr. Stark tell you how come you lied to me, you were going to the Veterans' Administration, when I saw you in the street, in your car? A. He never mentioned seeing me out in the street.

He told me on May 17th, when I went to work, that I had – he knows that I had gone to the union.

Q. Didn't he tell you that he had seen you in the car on the day you said you were going to the Veterans' Administration? A. I heard of this discussion, I believe he either said it to me or somebody else, and was related to me, that he seen me dropping two men off at Francis Lewis Boulevard.

Either it was told to me, or it was told from another party to me.

Q. Didn't he then accuse you of being a liar? A. No, he didn't accuse me of anything.

Q. Didn't you say – A. Not that day, no.

Q. Didn't he say, why did you lie to me? A. No, he didn't mention nothing like that, on the 17th. No, he didn't bring nothing like that up.

Q. On the morning of the 17th, isn't it a fact that neither Harold Stark
359 nor Fred Stark picked you up in the car?

You came into the place yourself? A. On what day?

Q. The day you were discharged, isn't it a fact – A. No.

Fred Stark picked me up with his Cadillac, as he always did, every morning, a quarter to seven to seven o'clock, and he brought his son along that day.

I did not walk to the office.

Q. About what time of day on May 17th, do you say it was that you were discharged? A. I would say, let's see now.

He picked me up, I believe, about ten minutes to seven. All in all, it took us to park about five minutes.

I would say about, within – between seven o'clock and a quarter after seven.

Q. What time were you discharged? A. That's the time. Between a quarter after seven – seven o'clock and a quarter after seven of that date, May 17th.

Q. Did he tell you in the car that you were discharged? A. No, he didn't say nothing yet.

Q. He picked you up? A. Right.

360 Q. He took you to the office? A. Right.

Q. And he immediately told you you were discharged? A. When he opened the office door, we went inside. There's like a little sliding door.

Then he told me, he says, I know you went down to the union.

Q. Immediately, when he came in, he opened the sliding door, that's

when he told you – A. As soon as we got into the office. That's right, he started right in on me. Immediately after he brought me in there.

Q. While you were in the car, you say, he didn't talk to you?

A. He mentioned nothing. He didn't even say good morning that day.

Q. Mr. Witness, you have been twice convicted of armed robbery, is that correct, sir? A. Yes.

And I've paid my debt to society.

Q. In connection with the first conviction, in 1948, how many years did you spend in prison? A. I sepnd fourteen months in Elmira Reformatory.

Q. In connection with your 1955 conviction, how much time did you spend in prison? A. 1955, I would say first on my – when I first went
361 up there, about five, five and a half years.

Q. Now, in connection with your employment by the Starks, you filled out an employment application, did you not? A. No, I didn't fill nothing out.

Q. Did you give them some information? A. Yes.

MS. JOHNSON: Objection.

Could you please tell me the relevance of this?

MR. KATZ: Credibility.

JUDGE SCHNEIDER: Yes, sir.

Proceed.

Q. At the time you were being hired for the job – A. Right?

Q. You were asked your address? A. Right, where I live.

Q. And you were asked where you had been – years of prior employment? A. Yes.

Q. And you told them about the years of prior employment?

A. Yes. Of what I worked.

Q. You said you worked as a subcontractor with your father?

362 A. I worked with my father as a subcontractor.

My father was the subcontractor. I helped him.

Q. The period you listed of your employment was part of the time you were in prison? A. No, I did not.

I was not in prison at the time.

How could I be working with my father, if I was in prison?

Q. Were you in prison at any time between 1946 and 1952?

A. 1946 –

Q. Through 1952. A. I got out in 1946. Out of prison.

Wait a while, hold it. I beg your pardon.

1948, the conviction was.

Q. Well, – A. All right.

Q. So that during the period of 1948 you were in prison? A. Right.

I got out in 1949, I believe it was.

Q. And didn't you tell the Starks that you worked for your father from 1946 through 1952? A. Oh, no. I didn't say nothing like that.

1948 I was in prison.

363 Q. You didn't say that to them? A. I didn't say I was in prison, no.

I don't have to bring out my criminal record when I'm applying for a job.

Q. But you did say you worked for your father from 1946 to 1952?

A. I didn't state what year I worked for him, except I worked on the Belt Parkway, I told him, after I came out of Elmira Reformatory.

I worked on the Belt Parkway as a mason.

I didn't even mention working at restaurants or any such thing. I didn't mention no dates to him.

Q. Isn't it a fact that in connection with your 1958 conviction, the first degree robbery, you pleaded guilty before Judge Michael B. Schweitzer?

A. That's correct.

Q. Isn't it a fact you were sentenced to a prison term of not less than

five years or more than ten years? A. That's correct.

Q. Isn't it a fact that you were thereafter paroled? A. I was paroled, right.

Q. Isn't it a fact you violated your parole in 1964, and you were sent back to prison? A. I beg your pardon, I did not commit violation. I never had a hearing on that violation.

364 I was charged with a crime.

Q. Mr. Peters, I didn't ask you if you had a hearing.

I asked you whether it's not a fact that you were returned to prison for violation of your parole on October 15th – A. That's what they called it.

Q. That's what they called it? A. That's right. That's what they called it.

JUDGE SCHNEIDER: October 15th, when?

MR. KATZ: 1964.

Q. Now, isn't it also a fact that in 1952, in December, you received a six months sentence for felonious assault, before Judge Sherman, in General Sessions Court, New York County? A. I pleaded guilty to a misdemeanor, because at that time the people I worked for owed me $70.00, and I went to collect my money, and we started – he started a fight. We started to fight there. And I, being on parole, naturally I was arrested for assault.

But I – I think I went to the Riker's Island, which I owed three months to Elmira, and they made me finish it up over there.

JUDGE SCHNEIDER: When was this?

THE WITNESS: 1952, Your Honor.

Q. Now, Mr. Peters, you're –

365 I'll withdraw that.

Your duties and functions was to supervise the roving maintenance crew, is that correct? A. No.

I was working foreman. Working. I worked the same as the men.

MR. KATZ: May we have Mr. Peters affidavit, the first one, of November 1st, 1973, marked as the next Respondent's Exhibit, please?

(Respondent's Exhibit 11 was received and marked for identification, of this date.)

Q. (By Mr. Katz) Mr. Peters, do you recall that on November the 1st, 1973, you were interviewed by Labor Board Agent, Elizabeth Johnson?

She asked you questions and you made answers? A. Yes.

Q. And she wrote them down? A. Yes.

Q. You then swore to the truth of the statements? A. That's correct.

Q. And you read the – A. I read and signed it.

Q. You read this thirteen page affidavit? A. That's correct.

Q. I want to call your attention to the first page, sir, the part in which
366 it is stated, "I was also to supervise the roving maintenance men?"

A. Right.

Q. Isn't it, therefore, a fact that as part of your duties, you were to supervise the roving maintenance men? A. How do you mean by – What is your conception of a supervisor?

What do you mean a supervisor is?

Q. When you were talking to Miss Johnson and you gave her this statement, which appears in Respondent's Exhibit 11 – A. Correct.

Q. (Continuing) – did she use the word supervise the roving maintenance man or did you use it? A. In other words, taking the men out and seeing that the work is being done.

Q. Who used the word to supervise the roving maintenance men, Miss Johnson or yourself? A. I used it.

Q. So you understand what the phrase means? A. Not as a supervisor that you were – that you are trying to say.

Q. Did I use the word supervisor, or did I say – A. That's what we're coming to?

367 Q. That's what we're coming to? A. Go ahead.

Q. As part of your regular duties and functions, you had authority to send men to other jobs, didn't you? A. What you mean other jobs?

Only when a person like, they needed a porter or somebody, would have to come over there and tell me I need somebody over there, I'd send him over there, correct.

Q. You would decide which man is to go? A. Yes, I can decide who can go there.

Q. Wasn't it also part of your regular duties and responsibilities, to see that the jobs that you were assigned to, with other men, were done properly? A. They were done properly.

Q. Weren't – Wasn't it part of your duty and responsibility –

A. Yes, as a working foreman, I was responsible to see that the jobs were done.

Q. Doesn't the companies have a practice of having workers come in the morning, and check their names on a posted list? A. That's right.

They have a piece of yellow paper there with their names, and they just check it off.

368 Q. Isn't it a fact that you did not have to follow that practice, and you didn't follow that practice? A. No, I didn't have to sign in.

* * * * *

Q. (By Mr. Katz) Mr. Peters, a little while ago, I asked you when you finished the meeting on May 16th, in the union office with the four men, what you did, and you told us you drove them home, dropped off two men one place, and two men another place? A. That's right.

Q. And then you went – A. To my building.

Q. To your place? A. That's correct.

Q. Let me show you your affidavit, sir, Respondent's Exhibit 11. That

369 part where you say – A. I dropped four men off.

Q. You said, "Then I took the men back to my apartment."

Do you want to see that? A. That's right.

Q. Which is correct, did you take them back to your apartment?

A. I took them back to the apartment, I dropped them off at their apartment, they're in their apartment, and then I went home to my apartment.

Q. Let me show you the sentence, sir. I appreciate if you look at it.

The sentence says, "Then I took the men back to my apartment."

Did you or did you not take the men back to your apartment?

A. I just stated, if this states that I dropped them off at my apartment, I dropped two men to their place, two men on Francis Lewis, at which Fred Stark states that he seen me drop them off, and then I went home.

Q. So the statement that you dropped them off at your apartment, is not – A. Well, it's the way you want to misinterpret it.

Q. I'm misinterpreting it, right? A. The way you want to.

370 JUDGE SCHNEIDER: What does it say?

THE WITNESS: It says, "I dropped them off at my apartment," in other words.

JUDGE SCHNEIDER: But that's not correct?

THE WITNESS: The correct, proper, should have read, I dropped two men off at their apartment, Rogers and Charley. Then I dropped the two men on Francis Lewis where they lived.

In other words, I'm trying to state that I dropped them off at their apartment, and I went home to my apartment. Dropped them off at their apartments, in other words.

JUDGE SCHNEIDER: All right.

Q. Isn't it a fact that you never spoke to the men about the union in the presence of either Harold Stark, Rita Stark, Fred Stark, or any of the secretaries in the office? A. No, sir.

Because I had heard previously –

Q. It's true, you never spoke to the men about the union, in the presence of any of the bosses? A. No, sir.

Q. You always stayed away from it, you didn't want them to know about it? A. That's right.

371 Q. That was your personal business? A. Right.

Because what I heard one time before, they tried to form a union, and he fired them before they even got started.

Q. When did you hear that? A. When I was working. A long time ago.

Q. When you were working? A. Yes.

Q. You started to work for them – A. 1971.

Q. How long after you started to work for them, did you hear this statement, that you just now made? A. I would say about 1972, from one of his drunks.

I think it's Charley Little stated one time for me –

Q. Did you tell that to Miss Johnson, that this employer was anti-union, what he had done once before? A. No.

I didn't bring none of that up at the time, but I'm telling you now, and this Court.

Q. Didn't you find out that Mr. Stark had a contract with Local 32B for other buildings? A. Arlington building.

Q. For other buildings? A. Don't say other buildings.

372 Arlington Park.

Those are four buildings he has there.

Q. About how many apartments are there –

JUDGE SCHNEIDER: Mr. – A. He has a hundred, Your Honor.

JUDGE SCHNEIDER: Don't argue with Counsel. Just answer his questions, please.

THE WITNESS: But Mr. Stark has a hundred.

JUDGE SCHNEIDER: Confine yourself to answering his questions.

THE WITNESS: Right.

Q. You found out that he had signed a contract, is that right?

A. I understand people joined the union and signed a contract.

Q. With Local 32B, the same union that you and the other men went up to see? A. That's correct.

Q. When for the first time did you find that out? A. Oh, let's see now.

I would say about, around April, beginning of April, somewheres around there.

Q. It was in the same month in which, at the end of the month, you and the other fellows met in your apartment? A. Right.

373 Q. You told Miss Johnson on direct examination, that Fred Stark had made statements to you that you had stabbed him in the back, and you should forget about the union? A. That's what he told me.

Q. You said that, right? A. He told me that, yes.

Q. He told you this sometime in May, right? A. May 14th.

Q. Did you say to him, Mr. Stark, you just signed a congract with Local 32B, how come you let them have a union, why can't we have a union?

A. Because this is the roving mainteners. That's an apartment building.

Q. Did you say anything to him?

How come you got the same union over there, and you don't want to have it for us fellows? A. I didn't even mention it.

If I would have mentioned it –

Q. You didn't discuss it? A. No. I didn't discuss it.

Excuse me, Your Honor, on what day is this supposed to be he's asking me this question in on what day was that?

374 Q. Anytime after April 30th, when you fellows signed the cards.

A. Did he ever have a discussion about the union?

Q. No.

Did you, since you say you knew that in April he had signed a contract for other buildings with Local 32B – A. Right.

Q. You knew that? A. I knew that he signed a union, with the other union, right.

Q. After April 30th, when you say you had some conversation with him, in which he referred to stabbing in the back and the other things you say he said – A. He didn't ask me about the other unions.

Q. You said you didn't say anything to him. A. About that particular union, no.

I just want to get it correct here.

Q. You said that this conversation about you stabbing him in the back, and so forth, took place on May 14th, is that right? A. That's correct. That's correct.

Q. By that time, four of the men had already been either discharged or their employment was terminated, is that right? A. They were fired.

375 Q. On the 11th, is that right? A. They were fired, four men on the 11th. On May 11th, they were fired.

Q. Did you tell Mr. Stark at any time, who had joined the union? A. No.

Q. Did he ever ask you who had joined the union? A. No.

Q. On May 14th, when he made these statements, you say, about stabbing you in the back – A. Stabbing him in the back.

Q. He didn't say, you're fired, did he? A. No.

He said I could continue to work, if I would forget about the union, not go down there.

Q. It wasn't until May 17th that he told you you were through, isn't that right? A. That I was fired, that's correct.

Q. Between May 14th and May 17th, what happened is that you told

him you were going to the Veterans' Administration, but in truth and fact you didn't, you went elsewhere, isn't that right? A. I went to the union.

Q. But you didn't go to the Veterans' Administration? A. No.

376 Q. When you were supposed to be working that day, you did not work on the 16th? A. No.

I wasn't supposed to, because I already asked for permission to be off that day, for May 16th. I already told him I would not be in on May 16th.

Q. You asked for permission to go to the Veterans' Administration?

A. I told him I would take the day off, you know, I have to have knowledge of him telling me to stay away from the union.

I'm not going to go and tell him I'm going down to the union. So, I stated I'm going to the Veterans' Hospital, that, you know, I was spitting blood.

Q. Had you been sick before May 16th?

Had you been sick for a period of time? A. I had the flu about, let's say, from May 7th until, I believe, May 7th until I went back to work on May 14th I had the flu.

Q. Is that the illness in which you said you received treatment by somebody who lives in the building? A. I had the flu, yes.

Q. Is that, during that illness, you were treated by somebody who lived in the building that you were living in? A. That's correct.

377 Q. That was the lab technician that was living in that building?

A. Correct.

Q. Who you say was – had given you an injection? A. Correct.

Q. He wasn't a doctor? A. No. He wasn't a doctor.

He was an authorized, licensed technician.

Q. Did you hear your wife's testimony today?

Were you sitting here when she was testifying? A. I was here.

I heard everything she said.

Q. Did you hear her say, amongst other things, that on May 16th, you

were working that day? A. I was working that day?

I don't –

Q. Did you hear her say that? A. I don't believe I heard it there. If she did say it, I didn't hear it. I didn't hear that part.

Q. If she said you were working on that day, that wasn't correct, am I right? A. I wasn't working May 16th.

How could I?

378 Q. If she said it, that was not correct? A. My wife is a very nervous woman.

JUDGE SCHNEIDER: No, no, the question is –

Q. Now, what day was it that you told Mr. Stark that you were spitting blood? A. That I was spitting blood?

Q. Yes. A. On, – Let's see, the 15th.

Q. That's the time you say he said to you, stay away from the union? A. He just said, made a statement, to make sure you don't go down to the union. That's all.

Q. This is – A. And I told him I'm going to the –

Q. This is at the time when you had been working for him since 1971, right? A. I was working for him since October – right. October 1st, I believe, 1971.

Q. Did he ask you, do you feel weak as a result of this blood? Are you taking care of yourself? Can I help you? A. Well, ask Mr. Stark.

Q. I'm asking you, Mr. Witness.

Did he say anything to you about how do you feel, do you feel good,

379 do you feel bad? A. When?

Q. On this day, a couple of days before you went down to the union? A. No, he didn't mention it.

He didn't even say, when I came back, May 14th, how do you feel or anything.

Q. How long had you been spitting blood, would you say? A. I would say from the time I got hurt working for Mr. Stark.

Q. How long was that? A. A cement block hit me on the head.

Q. How long was that? A. Let's see.

That would be around 1971 – December or somewhere around there.

Q. So – A. Where he took me to the hospital.

Q. From December of '71, up to May of '73, you were spitting blood? A. Every now and then, occasionally I do, I would spit blood.

Q. On this morning, when you say you told him that you were spitting blood, and you wanted to go to the Veterans' Administration, he also picked you up in his Cadillac that morning, right? A. May 16th, no.

380 On May 16th he did not pick me up with his Cadillac.

Q. Before you went to the union on May 16th, you told us you made an appointment a day or two before that to go? A. The day before.

Q. The day before, that's the day you told him that you told him that you had been spitting blood, and you wanted the next day off to go to the Veterans' Administration? A. On May 16th, I told him, when I took the truck in and the men.

Q. On May 15th, did he pick you up in the morning and drive you to the office? A. Yes.

Q. Did you have any discussion with him about your state of health? A. No.

At that time, I didn't discuss anything with him. He's not interested in my health.

Q. You say he's not interested in your health? A. Definitely no.

He's not interested in any of his workers' health.

Q. Now, on the morning of May 17th, you say that Mrs. Stark told you that I see you went to the union yesterday. A. That's correct.

381 Q. You didn't tell Mr. Stark that you had gone to the union, did you?

A. He knew it.

Q. He knew it.

Did you ask him how he knew it, who told him? A. I didn't have to. He told me.

Q. Who did he say told him, that he knew you had taken the men to the union? A. All I know is he told me that I went to the union, that I saw you drop some men off at Francis Lewis Boulevard, that's all.

He didn't tell me who told him, or how he found out, or anything.

Q. You didn't ask him, right? A. Why should I?

Q. You didn't ask him?

JUDGE SCHNEIDER: Just answer the question.

Did you or didn't you?

THE WITNESS: No, I didn't ask him.

Q. On May 14th, 1973, sometime between twelve and one o'clock, you say that Fred Stark and Harold Stark came to where you were working?

A. They drove down there, correct.

382 Q. And Mr. Fred Stark called you aside.

You mean he told Harold not to be there? A. He didn't say nothing to Harold.

He called me on the side.

Q. How far away were you from Harold? A. Harold was inside the store.

I would say from here, where I'm sitting to, not this wall, but the other wall. On the other side of the – inside the store.

Q. In your opinion, could Harold hear the conversation between Mr. Fred Stark and yourself? A. Impossible.

Q. Harold Stark is the son, is that right? A. That's his son.

Q. He's active in the business? A. Yes, he's working.

Q. In this conversation that you said you had alone with Mr. Fred Stark, he confessed to you he fired the four men for joining the union?

A. Yes, he did.

And he named everyone of them.

Q. Didn't he name the four men that were fired?

Did he give you the names of the four men that were fired on May 11th?

A. Because they joined the union.

383 Q. He told you he fired them because they joined the union?

A. That's correct.

And he knew also that I had joined the union, by his words, the way – his conversation.

Q. On May 14th, he already knew, you say, that you had joined the union? A. He must have.

That's what he told me on the side –

Why else would he take me on the side and tell me about the union?

Q. Are you telling us, sir, the reason he told you and confessed that he fired the four men for joining the union, is because he knew you had already joined the union? A. He told me to stay away from the union, that I could continue to work.

What does that mean?

Q. It means to you he knew you had joined the union already?

A. Evidently.

Q. And you worked that day, am I right? A. I worked that day, yes, sir.

Q. You worked the following day, the 15th? A. I worked the following day, too.

384 Q. Did you have any conversation with him?

Did anybody from the Starks have any conversation with you on the 15th, about the union? A. No.

Q. Did any of the Starks have any conversation with you on the 16th, about the union? A. I didn't see none of the Starks on the 16th.

JUDGE SCHNEIDER: Nor did you have a conversation with them about the union?

That's the question.

THE WITNESS: No.

* * * * *

Q. (By Mr. Katz) On the morning of May 17th, when you were discharged, would you tell us what Mr. Fred Stark said to you? A. Well, Mr. Fred Stark, he says that you went down to the union. I told you to stay away from the union. And everything.

385 And I believe he stated that he – either he or somebody else saw me drop two men off.

Q. Saw you drop two men off where? A. Francis Lewis Boulevard.

And he says, you're fired.

Q. Let's take that statement, sir.

Didn't he tell you that he saw you drop two men off and therefore you hadn't gone to the Veterans' Administration, and you lied to him and he was firing you for that? A. He didn't say anything about lying to him.

He just stated that he knows I went down to the union.

Q. And he knows you didn't go to the Veterans' Administration, because he saw you? A. Saw me go to the union?

He didn't state he saw me.

He saw me drop either – either saw me or somebody told him, you know, that I dropped two men off at Francis Lewis Boulevard. That's what he told me.

Q. You had asked for the day off? A. The 15th.

Q. On the 15th, because you wanted to go to the Veterans' Administration, that's what you told him? A. That's what I told him.

386 Q. Right.

And on the morning of the 17th, after he picked you up in his Cadillac and took you to the office – A. Right.

Q. (Continuing) – he told you that he had seen you the day before driving around? A. Driving around?

He didn't say nothing about driving around.

Q. He said he saw you? A. Either he saw me drop two men off at Francis Lewis or somebody told him.

Q. In the car you dropped him off? A. Yes.

Q. So you were driving at the time? A. Yes.

Not driving around.

I brought the men back from the union.

Q. But he saw you on Francis Lewis Boulevard? A. That's what he stated.

Q. And you tell us that he said to you –

You tell us again what you say he said to you about the union.

A. That you had been down to the union. I see you didn't take my advice and stay away from the union, Mr. Peters. You're fired.

387 Q. Now, you had been to the union the day before, with the four fellows that were fired, right? A. May 16th, correct.

Q. None of those four fellows had been working for Mr. Stark, right?

When you had this conversation with Mr. Stark. A. On the 17th?

Q. Right. A. Right.

They were no longer employed by him.

Q. They were no longer employed? A. May 11th they were fired.

Q. And the day before? A. The day before what?

Q. The 17th, another fellow, employment was terminated? A. On May 16th, Felipe Ortiz was fired, the day I came back from the union.

Q. Did you –

I'll withdraw that.

You didn't tell Mr. Stark that you were going to the union on the 16th?

A. On the 16th?

MS. JOHNSON: Objection.

He's asked this question numerous times.

388 JUDGE SCHNEIDER: No.

The witness already said – that's the reason he said he was going to the Veterans Administration, because he didn't want Mr. Stark to know about his union activity, and so on.

THE WITNESS: How could I talk to him on May 16th that you're telling me?

I didn't even see Harold Stark or Fred Stark on May 16th. I was down to the union.

How could I tell him anything?

I told him like I told you before, on previous, that I told him on May 15th, after work, 4:30.

JUDGE SCHNEIDER: What was that in answer to?

THE WITNESS: What was that?

JUDGE SCHNEIDER: What's that in answer to?

THE WITNESS: He asked me did I say anything to Mr. Stark on May 16th. That's the question he put before.

I didn't see him, Mr. Stark, on May 16th. I went to the union, so how could I tell him anything on May 16th?

Q. During the period of your employment, isn't it a fact that you fired some people? A. I never fired anybody.

389 Q. Did you ever recommend the firing of people? A. I never recommended the firing of anybody.

I took some men out on this occasion, to Francis Lewis Boulevard, five men and myself, to take out ashes and put on the dump truck and take it out. I had three young fellows there. I would say about 15 to 16 years of age.

On my break time, 10:00 o'clock, they went on their break, and they did not come back.

Around 10:30, I called up Fred Stark on the telephone and I conveyed

to him that three of the men have not come back from the break.

Again, around 11:00 o'clock, I again called Fred Stark and told him they still have not come back. So he told me, when they come back, to send them back to the office. And that's it.

When they came back, it was around 2:00 o'clock, I sent them back to the office.

JUDGE SCHNEIDER: Which Stark did you talk to?

THE WITNESS: Fred Stark.

MR. KATZ: I have no further questions.

REDIRECT EXAMINATION

Q. (By Ms. Johnson) Mr. Peters, did you apply for unemployment compensation? A. Yes, I did.

390 MR. KATZ: Improper redirect.

Nothing brought out on either direct or cross.

JUDGE SCHNEIDER: Overruled.

A. Yes, I did.

Q. Did you receive a decision on your unemployment compensation?

A. The first time I was denied unemployment.

A Mrs. Braunstein, at the unemployment office, told me that the office told her that I stole a refrigerator, and misconduct, and therefore I am not entitled to unemployment.

And I told her I want to appeal that decision, and I did appeal the decision.

MS. JOHNSON: Could I have this marked as General Counsel's Exhibit 4 for identification?

(General Counsel's Exhibit 4 was received and marked for identification, of this date.)

Q. (By Ms. Johnson) Could you tell me, Mr. Peters, if that was the decision you received? A. This is the decision I had before the referee,

David Savage, and which we had the hearing on my appeal, and giving me the decision stating that I did not steal the refrigerator, and I did not commit misconduct of any sort, and the decision, initial determination is overruled.

391 And he handed me my decision, stating I was right.

MR. KATZ: May I move to strike the answer as not responsive?

The question was, is that the decision.

I have no objection to the decision going in. Let's have the decision speak for itself, rather than this expert witness characterizing it.

JUDGE SCHNEIDER: Very well.

Everything will go out except the statement that that's the decision.

MS. JOHNSON: I – I offer this into evidence at this time.

* * * * *

JUDGE SCHNEIDER: This document is what you're referring to, General Counsel's Exhibit 4?

MS. JOHNSON: Yes.

JUDGE SCHNEIDER: You're offering it in evidence?

MS. JOHNSON: Yes.

JUDGE SCHNEIDER: Any objection?

MR. KATZ: No objection.

JUDGE SCHNEIDER: There's no need to take judicial notice of it, since

392 it's in evidence.

(Whereupon, the above referred to was received and marked General Counsel's Exhibit 4 in evidence.)

* * * * *

393 16 Court Street
Brooklyn, New York
Tuesday, March 19, 1974

* * * * *

395 KAREN GSELL

was called as a witness and, having been first duly sworn by Judge Schneider, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Katz) I met you for the first time Friday in my office?

A. Yes, you did.

Q. You and I discussed this case? A. Yes, we have.

Q. You are employed by Mr. Stark? A. Yes, I am.

Q. Were you employed in May of last year? A. Yes, I was.

Q. I want to call your attention to the date of May 11, 1973, that being the date upon which an incident occurred in connection with Charles

396 Thompson, Roger Evans, Jeffrey Maksymchak and Wayne Huff.

A. Yes.

Q. On that day can you tell us about what time of day you saw Jeffrey and where you saw him? A. It was after 1 in the afternoon, after 1 o'clock.

Q. Keep your voice up and try and talk so they can hear you back there because it is a large room. A. It was after 1 o'clock in the afternoon, between 1 and 1:15, around then.

Q. By the way, what is your work for Mr. Stark? A. Secretary for Mr. Stark.

Q. Where do you work? A. In the office, 198-10 Jamaica Avenue.

Q. Can you tell me what, if anything, you said to Jeffrey and what he said to you on that date when you saw him? A. Yes. Well, Jeffrey had came into the office and I had a message from Helga Schenck. She told me to tell him to wait because he had to go to the court for her.

Q. What did you tell Jeffrey? A. Yes, I told him that message, that – to wait at the office because he had to go to the court when Helga came back from lunch.

Q. What did Jeffrey do then? A. He stood in the back of the

office and he waited.

397 Q. For about how long did he wait and did some incident occur thereafter? A. About five, ten minutes, I'm not exactly sure how long it was, there was a knock on the back door and Charles – Jeffrey went over, opened the door and Charles Thompson came in.

Q. Is that door kept locked? A. Yes, it is, yes.

Q. Did you see Charles Thompson come in? A. Yes, I did.

Q. Who spoke first, you or Charles Thompson? A. Charles Thompson spoke.

Q. What did he say? A. He said, "I have had it, I quit."

Q. What else happened? A. Then he turned to Jeff and said, "Come outside with me".

They started towards the door and that is when I spoke. I said to Jeff wait, you have to wait for Helga and he said I will be outside, and they closed the door.

MR. KATZ: No further questions.

MS. JOHNSON: Can we have a brief moment?

JUDGE SCHNEIDER: Yes.

MR. KATZ: Just one other question, I'm sorry.

Q. (By Mr. Katz) Were you interviewed in November of 1973 by Ms.

398 Johnson of the Labor Board? A. Yes, I was.

Q. She asked you questions and you gave her answers? A. Gave her answers.

Q. You signed a statement for her? A. Yes, I did.

MR. KATZ: That is all.

CROSS EXAMINATION

Q. (By Ms. Johnson) Have you ever hired anyone? A. No, I didn't.

Q. Have you ever fired anyone? A. No, I haven't.

Q. Has anyone ever come to you and asked for time off? A. No, I'm not an authority in the office.

Q. Do you have any idea why Charles Thompson came in that day?

MR. KATZ: Objection as immaterial.

JUDGE SCHNEIDER: Overruled.

A. I really have no idea, no. He never said anything.

Q. Do you know whether Jeff did go outside and wait? A. He walked out the back door. That is all I know, and when Helga came back he was not there any more.

* * * * *

LAWRENCE MOULTRIE

was called as a witness and, having been first duly sworn by Judge Schneider, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Katz) Mr. Moultrie, are you known –

JUDGE SCHNEIDER: Can we have the witness identified?

Q. I am saying, Mr. Moultrie, are you known by some nickname among the workers at Stark? A. Well, I call Thompson Jimmy.

Q. No, what do they call you? A. Oh, Moochie, they call me Moochie most of the time.

Q. Did I meet you for the first time last Friday, the same time I met Karen in my office? A. That's right.

Q. Did we discuss this case? A. That's right.

Q. Did I ask you questions? A. Yes, sir.

JUDGE SCHNEIDER: May we have the witness' name and address, Mr. Katz?

400 MR. KATZ: I thought – didn't we get that?

Q. Will you give us your name and address?

MR. KATZ: Doesn't the judge usually ask the name and address?

MR. SCHNEIDER: I don't. I don't know what the practice of others is.

Q. Would you state for the record your full name and address, please.

A. My name is Lawrence Moultrie, 198 Montauk Avenue, Brooklyn.

JUDGE SCHNEIDER: How do you spell your last name?

THE WITNESS: M-o-u-l-t-r-i-e.

Q. I want to call your direction and attention to the date of May 11, 1973, that being the date upon which an incident occurred in connection with Charles Thompson, Roger Evans, Jeffrey Maksymchak and Wayne Huff.

In the morning of that day were you given an assignment of some work to do? A. That's right.

Q. Who gave you the assignment? A. Harold Stark.

Q. What is the procedure followed by Stark in giving the assignments of work? A. Well, Harold Stark had a small job for me to do that morning. My job was to board up three windows on Farmers Boulevard that
401 morning.

Q. Can you describe the size of the windows, approximately?

A. About like this (indicating), about this wide, three windows.

Q. Hold your hands out, we want to get it for the record. That is about five, six feet.

JUDGE SCHNEIDER: I would say 36 inches.

Q. How high was the window? A. About like this (indicating).

Q. In inches how high would you say? A. I say about 30 inches.

Q. What did you do? Did you proceed to that job? A. That's right, doing my job.

Q. What happened? A. Well, I went over, started my job that morning, went over to my job and I took my tools out and started boarding the windows up, and I was doing my work.

Jimmy Thompson came over.

Q. When you say Jimmy Thompson, that is a nickname for Charles

Thomspon, is that the person? A. Right, right.

Q. Proceed. A. I started doing my work and Jimmy Thompson came over and started, he came over where I was doing my work.

402 I did not ask him to give me a hand. So after he came over, about five minutes, maybe a little more, Harold Stark came over and asked Jimmy Thompson, "What are you doing over here?"

Q. Let me interrupt you. What was Jimmy or Charlie Thompson doing before Harold Stark came to the job? A. He supposed to be doing his work.

Q. No, what was he doing when he was at your place? A. He was doing nothing, he wasn't even helping me.

Q. Was he sitting, standing? Describe for us where he was.

A. Right, he was standing, walking around, running around the building.

Q. Now then, you say Harold Stark came over? A. Harold Stark came over about five minutes later and spoke to him and said, "What are you doing here?"

He said, "I'm giving Moochie a hand. Moochie stopped over and asked me to give him a hand."

Q. What did you say? A. No, I didn't even stop. I came to my job, do my job.

Q. Is it your testimony that you did not stop at the job that Jimmy Thompson was at? A. That's right, I never stopped there.

Q. And you didn't have a conversation with him? A. No.

403 Q. You didn't ask him to come over to your job? A. I didn't ask him.

Q. Have you had occasion to work with a crew of men with George Peters? A. Yes, I have.

Q. Who is George Peters? A. George Peters was the foreman on the job too.

Q. You worked with him? A. I worked with him.

Q. About how many men would you generally work with him when he was foreman? A. It depends on the job. Sometimes five men, sometimes seven, sometimes more.

Q. I didn't get the answer. A. I say sometimes more men, it depends on the job, the size of the job.

Q. In the mornings when you fellows would congregate in the warehouse and get your assignments from Harold, did there ever come a time when Harold addressed the workers concerning drinking? A. Yes, there was.

Q. What did he say? A. Well, he would get all the men together and he said, "This is getting a little out of hand, this drinking is going to
404 stop. Somebody is going to get hurt and it is going too far. It will have to stop."

Q. Can you give us your best recollection how many times a month he would say it or did he say more or less than every month?

In other words, I want to find out what you remember. A. Sometimes two or three times a month, something like that, when they get a little out of hand, you know.

JUDGE SCHNEIDER: Was this Harold or Fred Stark?

THE WITNESS: Harold and sometimes Mr. Stark.

Q. Did you work on a job on Francis Lewis Boulevard where Peters was the foreman? A. Yes.

Q. Can you tell us in connection, as best you can recall, when did that happen? A. It was on Francis Lewis Boulevard. I can't remember the address, but we was taking the rubbish and ashes and things out of the basement, and I think it was after lunch.

Anyway, we had some young kids working with us. Peters fired both of them.

MS. JOHNSON: Objection.

Q. When you say he fired, tell us what he said. A. Well, he said – well, they wasn't doing enough work. They weren't working enough when I say that, for him to suit him.

405 Q. Were you there when this happened? A. Yes, I was.

Q. I now want to call your attention to the date of May 16, 1973 in connection with some incident concerning Felipe Ortiz.

Do you know who Felipe Ortiz is? A. Yes, I know him.

Q. On that day did you have to do any work at 201-15 Jamaica Avenue? A. Yes, I did.

Q. What was your work? A. Pick up some furniture out of the basement from 201.

Q. Did there come a time when Harold Stark came to the job?

A. Yes.

Q. Do you know whether he had a conversation with Felipe Ortiz?

A. With who?

Q. Felipe Ortiz. A. Yes, he had a conversation with him.

Q. Did you hear the conversation between them? A. Yes, I heard.

Q. Will you please tell us now as best as you can recall who said what

406 and what response was made? A. Well, what I heard Harold Stark told Ortiz, I call him Ortiz, he said, "This is getting to be a little ridiculous. Garbage is all over the place, in the bushes", so he explained to him.

He said, "There's plenty of shovels, tools and things down in the basement." He knew where they were.

Q. I just want to know the conversation. All you can tell us is what he said and what Ortiz said. A. Harold Stark told Ortiz his job was to keep the place clean around the outside and work the bushes, the garbage and things from the bushes.

Q. Keep your voice up. A. Rake the garbage and keep the outside clean.

Q. What? A. Keep the outside clean.

Q. What did Ortiz say, if anything? A. Ortiz said it was not his job, that wasn't his job, he wasn't going to do it. He said he will quit right now, "I'm not going to do it."

Q. In your presence did Harold Stark say to Ortiz, "Pick up the dog droppings with your hand"? A. No, he never said that to him.

MS. JOHNSON: Objection. He is leading the witness, your Honor. He is giving him the information and tnen asking him whether or not he heard
407 anything.

JUDGE SCHNEIDER: Sustained.

Q. Was there any conversation by anyone with respect to dog droppings or dog manure? A. Beg your pardon?

Q. Was there any conversation at the time you were there between Harold Stark and Ortiz about dog manure? A. Right, yes.

Q. Will you please tell us what the conversation was and who said it? A. Well, as I was saying, Harold Stark was explaining to Ortiz about he should get a rake and rake the papers, all the garbage from the sidewalk and even the dog litter, and he should get a shovel and a pail and rake it up and put it in the pail.

Q. What did Ortiz say, if anything, to that? A. Ortiz said, "I quit, that is still not my job". He said, "It is still not my job, I quit right now, I quit now."

Q. By the way, was Mrs. Peters there at this incident? A. Yes, she was.

Q. Describe how close or how far she was. A. She was about as far away I guess, maybe to the end of that desk. She was standing right behind Mr. Stark.

JUDGE SCHNEIDER: Indicating five to six feet.

408 Q. Do you know Wayne Huff? A. Yes.

Q. Were you working at a job on the roof at the time when some incident occurred? A. Yes.

MS. JOHNSON: Objection. Could we find out when?

Q. Could you please fix as best you can when this incident on the roof took place? A. This was in the summer, '72.

Q. The summer of '72? A. '72, '71. Not this summer. Anyway, it wasn't this summer, it was last summer. I figure about a year ago or maybe a little more.

Q. Is that the best you can give us? A. Yes, maybe it was a little more.

Q. Tell us what happened on that roof with respect to Wayne Huff. A. Well, I was downstairs, I was working down below. They was on the roof and I heard someone holler, "Moochie, hold the ladder, we have to bring Wayne Huff down from the roof."

So I saw Harold Stark and Charlie Blair bringing Wayne Huff. I had to hold the ladder, bring him down from the roof.

Q. When you say bringing him down, describe what they were doing.

409 A. He was drunk, he couldn't come down himself, so they had to help him.

Q. Explain what they were doing. A. Well, Charlie Blair was in the front letting him down and Harold Stark was beneath him easing him down from the roof.

Q. Do you recall an incident in connection with Wayne Huff and something about a truck? A. Yes, on Archer Avenue.

Q. Can you fix a time as best you can when this incident happened with Wayne Huff? A. Well, it was in the afternoon, we were just finishing a job. We was finishing a job we had to do, and we was putting the tubes back on the truck.

Q. Before you do this see if you can give us a better time with respect

to the mailing of the 1973 letter of termination of employment. A. Let me see. I can't remember exactly. Maybe about – maybe one or two months before. It has been so long I can't remember.

Q. What happened? A. Well, we finished the job we had to do so we was getting ready to put the tubes on the truck, so Harold said Wayne to get on the truck, and we were going to give the tubes to Wayne so Wayne
410 went to get on the truck, so he rolled under the truck.

So then we had to help Wayne up and put him on the back of the truck.

Q. Do you know what caused Wayne to roll under the truck?

A. Do I know what caused him to run under the truck? He was drinking.

Q. Were you on the job at the time you saw it? A. I was on the job at the time, right.

Q. With respect to Roger Evans, was there ever an occasion when you saw him drinking? A. Yes.

Q. Can you fix the time with respect to say his discharge on May 11, 1973? A. Yes.

Q. About when was it? A. I didn't understand that question very good. Could you explain it again to me?

Q. Were you ever present when Roger Evans had been sent home because of drinking? A. No, I was never present, but I have heard about it.

Q. If you don't know – A. No.

Q. All I want to know is what you know about it. A. Right.

* * * * *

CROSS EXAMINATION

Q. (By Ms. Johnson) Mr. Moultrie, isn't it a fact that on November 13, 1973 you gave me a statement? A. Yes.

Q. Was what you gave me the truth? A. It is true.

Q. How long have you worked for Fred Stark? A. Ten years.

Q. Who give you your orders? A. Harold Stark.

Q. Could you describe how he does it? A. Well, in the morning he goes in the garage, different guys go to different places.

Like sometimes I might go, three or four guys might go with Peters, three or four more guys to different places.

Q. Do people go with you? A. Sometimes.

Q. What type of work do you do? A. What type of work? I am – I do a little of everything. I drive a truck, sometimes I do plumbing work,
412 sometimes I do everything.

Q. At this time now does anybody work with you? A. At this time? Like yesterday?

Q. Or the day before. A. Yesterday, yes.

Q. Who was working now with you?

MR. KATZ: Objected to as immaterial.

MS. JOHNSON: I withdraw the question.

Q. Are you taking out two or three men at a time? A. Do I take out two or three men at a time? Well, see, I have my assignments to do.

Q. You mentioned previously that you went out with other men? A. Right.

Q. You drive a truck; is that right? A. Right.

Q. When you go out with other men and you drive a truck what happens? Do you tell the men what to do? A. No, I'm not a supervisor.

Q. What happens when you get to the job? A. Well, we know what to do. Harold tell us what to do. Like he tells us what to do, we know what to do and we go to the job.

Q. Recently have you gone on the job with several other men?
413 A. Recently?

Q. In the last week or two have you gone on the job with several other men? A. Yes.

Q. Could you give me an example? A. Three, four sometimes, depends upon the job.

Q. Was this last Friday?

MR. KATZ: I don't think he understands the question. You mean the type of work he does?

Q. Let us go back.

In the morning, as I understand it, Harold Stark makes assignments; is that what you said? A. Right.

Q. Recently when he has made assignments has he asked you to take out several other men with you? A. Sometimes, it depends.

Q. In the last week has he asked you to take several other men out? A. No.

Q. Can you give me an example of when he did ask you to take other men out or when you have gone out with other men? A. Well, whenever I'm not doing anything else I go out with other men. Like I say, I drive the truck, I go with men all the time.

414 Q. When you said when you were not doing something else. What are the other things you do? A. Like I said, I drive the oil truck sometimes.

Q. What are some of the other things that you do? A. Sometimes I help the plumber, sometimes might be delivering things. Do everything.

Q. And on occasion you go out with the other men? A. That's right.

Q. Can you remember when the last time was when you went out with some of the men? A. Yesterday.

Q. Who was with you yesterday? A. Well, me and I can't remember this man. He works with us. Dwight. I can't remember his last name. A new guy, Earl. I can't remember his name, a new fellow.

Q. Who told them what to do? A. Harold Stark.

Q. Did you drive them out to the site? A. Right.

Q. When you got to the site what did you do? What happened?

A. We did our job, our work.

Q. Do you ever give other men orders or insturcitons? A. Do I ever give them orders?

415 Q. Yes. A. No.

Q. Are you a foreman? A. No.

Q. Did Peters ever criticze your work? A. Never.

Q. Were you ever disciplined or sent home by Mr. Peters? A. No.

Q. On your direct examination you mentioned that periodically Harold Stark would come in in the morning and say drinking is getting out of hand.

Isn't it a fact that at least once a week he would give such warnings?

A. I say about two or three times, depends how it is getting a little out of hand.

MR. KATZ: Excuse me, can the witness take his hand away from his mouth because it is hard to hear.

THE WITNESS: Oh, right.

Q. Who would give these warnings? A. Harold Stark.

Q. Would he address them to everybody or would he pick out certain people, or both? A. Everybody, the whole crew.

Q. How long would you say drinking has been a problem?

A. About a year.

416 MR. KATZ: May I object to the form of the question? I assume we are talking about this place. Drinking has been a problem since God knows when.

Q. Isn't it true since you have been working for the Starks drinking has been a problem? A. It started getting a little out of hand about a year.

JUDGE SCHNEIDER: I don't understand. You mean about a year ago?

THE WITNESS: Right.

JUDGE SCHNEIDER: This is March, 1974. March, 1973?

THE WITNESS: Right, about a year ago.

Q. Then it wasn't a problem in that summer incident that you described about Wayne Huff, it wasn't a problem at that time or it was a problem at that time too? A. Yes.

JUDGE SCHNEIDER: Which is the question that was answered?

MS. JOHNSON: He described an incident in the summer of '72 and I wanted to know if it was the problem at that time.

THE WITNESS: Yes.

Q. Was it also a problem before that? A. Not much, no.

Q. On that incident in the summer of '72 that you described Wayne Huff, was he fired at that time? A. Well yes. Well, I really don't know.

417 He went home. I heard he was fired. I didn't hear Harold Stark telling us, so –

Q. The next day did he work? A. No.

Q. Did he work the following day? A. No, it was quite a while.

Q. Did he come back to work? A. He came back.

Q. Were you ever present when anyone was ever discharged for drinking? A. No, I was never present when anyone was discharged for drinking.

Q. How did you know it was a problem? A. How did I know it was a problem? Because like I said, about four – it was getting a little out of hand so Harold started getting us in, talking to all the guys on the job.

Q. Did Harold Stark ever speak to you about drinking, personally? A. No.

Q. Are you a teetotaler, do you drink at all? Are you a non-drinker? A. A non-drinker?

Q. Yes. A. I drink but I drink when I'm off work.

418 Q. Isn't it a fact that Harold Stark has found old wine bottles in your truck? A. Never, no, I drive all the trucks.

Q. Isn't it a fact that he has warned, he has taken bottles away from you or asked you not to drink? A. Never.

Q. Are you denying under oath that you have ever been warned about drinking and that you ever drank when you worked for Fred Stark? A. I never drink when I work.

JUDGE SCHNEIDER: Speak up, please.

A. (Continuing) I never drink when I'm working. I'm not supposed to drink when I'm working.

Q. So under oath you are denying that you were ever drunk while you worked for Fred Stark and that you have never been warned about drinking? A. Well, the whole crew got warned.

Q. Personally you, individually? A. Never, no.

Q. What language did Ortiz speak? A. Spanish, I think, Spanish.

Q. Would you understand him when he talked? A. Yes.

Q. Do you understand Spanish? A. I don't understand Spanish

419 but I can understand him because he worked with us.

MR. KATZ: Talk to the wall, please. I don't mean that, but project your voice.

Q. Could you understand him by gestures or how did you understand him? A. I could understand him sometimes.

Q. Isn't it a fact on that day you described that Harold Stark told Ortiz to pick up dog manure? A. Beg your pardon?

Q. Isn't it a fact on the day you described on your direct examination that Harold Stark told Ortiz to pick up dog manure? A. He told him to pick up the garbage with a rake, with his tools.

Q. I am directing the question as to whether Harold Stark on that day asked Ortiz to pick up dog manure, I'm not asking about any other garbage or whatever. A. Pick up dog manure?

Q. Yes. A. Yes, he told him to pick up the dog litter and garbage

and everything.

Q. Did Ortiz say he would pick up the dog litter with a shovel?

A. He said he would quit. He said he would quit. He said he wouldn't do anything.

420 Q. Didn't Mrs. Peters suggest that he get a shovel? A. Mrs. Peters didn't say anything.

Q. Would you tell me exactly what was said by Harold Stark that day and then, as far as you understand, what Ortiz said? A. Well, Harold Stark explained to Oriz that that was part of his job, to take care of the outside too as well as the inside.

He explained to him there's plenty shovels, all the tools were downstairs, he knew where they were.

He showed him, he took a shovel and raked dog litter and the paper, the garbage up from the bushes.

Q. Harold got a shovel you say? A. No, I say he explained to him that he could get the rake and rake the dog litter and all the papers from the bushes.

Q. Did he mention dog litter specifically? A. Dog litter too and get a shovel and put in the pail.

Q. What did Ortiz say? A. He said he wouldn't do it. He said, "I quit right now."

Q. You understood him to say that? A. Sure, I understood him.

Q. I want you to just focus on the dog manure. I don't want to talk about anything else.

Are you telling me under oath that Harold Stark did not tell Ortiz to

421 pick up the dog litter? A. Did not.

MR. KATZ: I will object to the form of the question. He is under oath for every question that is put to him.

Q. Are you telling me that Harold Stark did not order Ortiz to pick

up the dog litter with his fingers? A. He did not.

Q. Isn't it true that Ortiz made motions with his hands and said, "I won't pick it up"? A. He said, "I quit right now." That is not his job. He said, "I quit right now, I won't do it." That is not his job.

Q. You are saying then that he didn't make any motions with his hands or – A. I don't remember, it is so long, I don't remember if he made motions with his hands or not.

Q. Did any of the men speak to you about the union? A. Never.

Q. Did you know about the union? A. No.

Q. Did you know about the meeting? A. No.

Q. Why didn't they tell you about it?

MR. KATZ: I object to that.

JUDGE SCHNEIDER: If he knows.

422 MR. KATZ: Could we have the question reframed? Do you know why the men didn't speak to you?

JUDGE SCHNEIDER: All right. Do you know why the men didn't speak to you about the union?

THE WITNESS: No.

Q. Isn't it a fact that you are an old timer with Mr. Stark?

A. Am I an old timer? Yes, 10 years.

Q. Could we go back now to the incident you described where you were working on a crew with Mr. Peters.

Did that morning work the same way as other mornings with people being given assignments in the morning? A. Going back to –

Q. You described on your direct testimony a day when you worked with Mr. Peters? A. Yes.

Q. On that day in the morning did Harold Stark give out assignments or Mr. Fred Stark give out assignments? A. Yes.

Q. Could you tell us what was said then that morning? A. I

couldn't remember that.

Q. But the Starks gave assignments? A. Right.

Q. You and Peters and who else went with you, do you remember?

423 A. I couldn't remember that.

Q. Were there more than you and Mr. Peters? A. No, it was more.

Q. What was the job that you were going to do that day? A. At that time?

Q. Yes. A. I really can't remember. We do lots of jobs.

Q. The job that day that you were with Peters, what was the job assignment? A. The job that day? I couldn't remember that.

Q. Do you remember who else was with you? A. No.

Q. You don't remember who else was with you? A. No.

Q. Did Peters tell you what to do that day? A. Peters tell me? I guess so if I was with him, right. If we was working together he told us what to do.

Q. Didn't you get instructions in the morning from the Starks?

A. Got instructions from Mr. Stark or Harold or Peters.

Q. They would tell you what job assignment? A. Yes.

Q. What your job assignment was? A. Right.

Q. Did Peters give out job assignments in the morning too? A. Yes.

424 Q. He would give out assignments in the morning? A. Sometimes. Harold would give it to us to Peters to tell us what to do.

Q. Harold would tell Peters to tell everyone what to do? A. Yes.

Q. Do you know how much Peters was paid? A. I really don't know.

Q. Have you ever seen Mr. Peters repeat to Mr. Stark? A. I have seen him report to Mr. Stark? He had been at work in the morning when I'd get there.

Q. Isn't it true that Mr. Peters clears, and doesn't make any decisions

without first clearing them with the Starks?

MR. KATZ: I will object.

Q. As far as you know.

MR. KATZ: If he knows.

A. I don't understand what you mean.

JUDGE SCHNEIDER: If he knows.

MS. JOHNSON: I will rephrase the question.

Q. As far as you know Peters didn't think of his own job assignments, he is given assignments in the morning like everybody else? A. You mean give assignments?

Q. As far as you know Peters is given assignments in the morning like
425 everyone else, is that right, by one of the Starks? A. Yes, sometimes, right.

Q. Did he work with you? A. Yes, sometimes.

Q. But he worked, he did work? A. Yes.

JUDGE SCHNEIDER: Speak up clearly, please.

THE WITNESS: Yes, sir.

Q. Who runs the jobs? Who runs the job? A. Like when we go out to work? Peters is in charge, Peters runs the job.

Q. Isn't it true that the Starks come around to check on the jobs?

A. Sometimes Harold comes around, see how things are making out.

Q. Isn't it a fact that Harold Stark and Fred Stark make up the job assignments? A. Job assignments?

Q. They decide who is going to go to which job on a given day?

A. Sometimes.

Q. Who else? A. Just Harold and Mr. Stark sometimes do it alone.

Q. Either Harold Stark or Fred Stark? A. Right, right.

426 Q. What kind of a car do you drive? A. What kind of car I drive? I drive a Ford.

Q. What year? A. '67.

Q. How did you get it? A. How did I get it? It was given to me.

Q. Who gave it to you? A. Mr. Stark.

MS. JOHNSON: I have no further questions.

JUDGE SCHNEIDER: Mr. Stark?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Which Stark?

THE WITNESS: Fred Stark.

REDIRECT EXAMINATION

Q. (By Mr. Katz) When did you get this car that you just told us about? A. Where did I get it?

Q. When, in time? A. '72.

Q. I want to direct your attention to the testimony you gave when Ms. Johnson was talking to you about Oriz. You said that Ortiz used certain words. A. Yes.

Q. In what language did he use the words that you heard? A. Well,
427 when I see certain words, sometimes when I say certain words, sometimes he talked very clear. Sometimes you could hardly understand.

Q. Very clear in what language? A. Spanish.

Q. When he wasn't clear what was he talking? A. Sounded like a murmur like. If you are working right along you would understand. I could understand.

Q. Ms. Johnson asked you do you know how much Peters' salary was and you said you don't know? A. I don't know.

Q. Your salary is $90 a week? A. Right.

MR. KATZ: No further questions.

RECROSS EXAMINATION

Q. (By Ms. Johnson) Do you understand Spanish? A. No.

MS. JOHNSON: No further questions.

MR. KATZ: I have no further questions.

JUDGE SCHNEIDER: Mr. Moultrie, how long have you been working with the Starks?

THE WITNESS: Over 10 years.

JUDGE SCHNEIDER: Was Peters hired before you were?

THE WITNESS: No, Peters was hired –

JUDGE SCHNEIDER: He was hired as a foreman?

428 THE WITNESS: Yes.

JUDGE SCHNEIDER: Are you a foreman?

THE WITNESS: No, sir.

JUDGE SCHNEIDER: Since Peters has left who is the foreman?

THE WITNESS: Harold, Harold Stark.

JUDGE SCHNEIDER: Harold Stark is the foreman?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Well, did they give him a new title after Peters left?

THE WITNESS: You mean new title?

JUDGE SCHNEIDER: Did they give Harold Stark a new title of foreman?

THE WITNESS: No, sir.

Harold Stark is the foreman now.

JUDGE SCHNEIDER: Harold was always the foreman?

THE WITNESS: Right.

JUDGE SCHNEIDER: But since Peters left there has not been a new foreman added?

THE WITNESS: No.

JUDGE SCHNEIDER: On this occasion when you were nailing up the windows and Harold Stark asked Thompson what he was doing there, I understand Thompson said that he was helping you.

THE WITNESS: Right.

429 JUDGE SCHNEIDER: That you had asked him to help you.

THE WITNESS: Right.

JUDGE SCHNEIDER: Did you say anything at that time?

THE WITNESS: I never even asked him.

JUDGE SCHNEIDER: When Thompson made that statement to Harold Stark did you tell Harold that wasn't so?

THE WITNESS: He asked me, "Did you ask him?" I said, "No, I did not ask him."

JUDGE SCHNEIDER: Harold asked him whether you did?

THE WITNESS: Right.

JUDGE SCHNEIDER: And you said no?

THE WITNESS: Right.

JUDGE SCHNEIDER: That was in the presence of Thompson?

THE WITNESS: Right.

JUDGE SCHNEIDER: Then what did Harold say?

THE WITNESS: Harold said, "Let's come on, Jim, let's go back and do your job across the street," and took him away.

JUDGE SCHNEIDER: I want to direct your attention to this incident on Francis Lewis Boulevard. When did you say that happened?

THE WITNESS: About a year or so ago, maybe more.

JUDGE SCHNEIDER: A year or so ago or maybe more?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Who was working on that job with you besides

430 Peters?

THE WITNESS: Well, there was two kids but I can't remember their names.

JUDGE SCHNEIDER: There were two kids?

THE WITNESS: Right.

JUDGE SCHNEIDER: Tell me again what happened with respect to those kids.

THE WITNESS: Well, what happened, Peters fired them.

JUDGE SCHNEIDER: When you say he fired them, how did this come about? What did Peters say and do and what did these others do?

THE WITNESS: Peters said they wouldn't bring the garbage up, it wouldn't suit them dragging around, you know, fooling around on the job, fooling around.

JUDGE SCHNEIDER: They were fooling around on the job?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Who did he say that to?

THE WITNESS: Who did he say that to?

JUDGE SCHNEIDER: Yes.

THE WITNESS: Well, I heard the whole conversation. We was in the basement.

JUDGE SCHNEIDER: What was the conversation? What was said by everybody?

THE WITNESS: Well, they was fooling around and Peters asked them if they wanted to work or not.

431 JUDGE SCHNEIDER: Peters asked them if they wanted to work or not?

THE WITNESS: Yes. Anyway, Peters fired them.

JUDGE SCHNEIDER: That is not telling me what was said and done.

MR. KATZ: Ask him to give us the conversation rather than the conclusion.

THE WITNESS: This was a long time, I couldn't recall. That was a long time ago when he fired them.

JUDGE SCHNEIDER: That doesn't help us much because if you told us what happened we might disagree that Peters fired them, but unless you tell us what happened we can't know whether your opinion is sound or whether it isn't.

THE WITNESS: Well, like I told you, it is a long time ago, I can't

remember. All I know is Peters fired them and they went home and I never seen them again.

JUDGE SCHNEIDER: You can't remember what was said, all you can remember is that Peters fired them?

THE WITNESS: Well, I know they was fooling around. Peters told them stop fooling around. "If you are going to work, work or go home."

JUDGE SCHNEIDER: He said either to work or go home?

THE WITNESS: Right.

Then he fired them.

432 JUDGE SCHNEIDER: Did they say anything when he said, "Either work or go home?

THE WITNESS: What did they say? "We go home."

JUDGE SCHNEIDER: So they said –

THE WITNESS: They said a few more words, but I can't remember what they said. They left.

JUDGE SCHNEIDER: They said a few more words and then they left?

THE WITNESS: They left, they quit, he fired them.

JUDGE SCHNEIDER: You say they quit, he fired them?

THE WITNESS: He fired them.

JUDGE SCHNEIDER: You also said they quit.

THE WITNESS: No, when I say quit, he fired them. Then they left. That is what – they quit.

JUDGE SCHNEIDER: You told us about this occasion in which Harold Stark and Charlie Blair carried Huff down the ladder.

THE WITNESS: Right.

JUDGE SHCNEIDER: But you didn't tell us why. What was wrong with Huff.

THE WITNESS: He wasn't in shape to come down by himself.

JUDGE SCHNEIDER: Why not?

THE WITNESS: He was drunk.

JUDGE SCHNEIDER: How do you know this?

433 THE WITNESS: He couldn't stand up and I know drunk people when I see them.

I heard he was drinking on the roof and he couldn't walk, couldn't come down the ladder by himself.

JUDGE SCHNEIDER: What happened after they carried him down the ladder? Did he walk off by himself?

THE WITNESS: I was driving the Ford, I heard somebody took him home. Who or how he got home I don't know. I left.

JUDGE SCHNEIDER: What happened after they carried him down the ladder, when they got him to the foot of the ladder? As I understand you were steadying the ladder.

THE WITNESS: Right.

JUDGE SCHNEIDER: When they got to the foot of the ladder was Huff carried away or did he walk away?

THE WITNESS: I went back to the Ford then. When I left, when I walked away Harold Stark and Charlie Blair was holding on to him still.

JUDGE SCHNEIDER: You didn't see whether he walked away or not?

THE WITNESS: No.

JUDGE SCHNEIDER: Was he standing up when you saw him?

THE WITNESS: They was holding him up.

JUDGE SCHNEIDER: Blair was holding him up?

THE WITNESS: Charlie, Harold, right.

434 JUDGE SCHNEIDER: I have nothing further. Do you have any further questions, Mr. Katz?

MR. KATZ: No.

JUDGE SCHNEIDER: Ms. Johnson?

FURTHER RECROSS EXAMINATIOIN

Q. (By Ms. Johnson) On the occasion you just described with Mr. Huff, do you know whether he was fired then that day or did you see him at work the next day? A. He didn't work the next day.

Q. Did he come back to work? A. He came back but not – it was a while after. He didn't come back the next day.

MR. KATZ: This was asked on her cross-examination.

Q. Isn't it true that he could have been sick? A. Could have been sick?

MR. KATZ: I object to the form of the question.

A. (Continuing) I don't know.

JUDGE SCHNEIDER: Overruled.

MR. KATZ: Anything could have been.

JUDGE SCHNEIDER: She is asking for his evaluation of Huff's condition. That is what he testified to on direct examination as to Huff's – no, I beg your pardon, he testified in answer to my question.

She is inquiring about Huff's condition and the question is proper. Proceed.

435 MR. KATZ: His condition when?

JUDGE SCHNEIDER: His physical condition.

MR. KATZ: At the time of this incident or the time that lapsed before he came back?

MS. JOHNSON: At the time of the incident.

MR. KATZ: I want it clear.

THE WITNESS: What is the question?

Q. Isn't it true at the time of this incident Huff could have been sick?

A. Could he have been sick? I really don't know.

MS. JOHNSON: No further questions.

MR. KATZ: No further questions.

JUDGE SCHNEIDER: You are excused, Mr. Moultrie, thank you, sir.

(Witness excused)

MR. KATZ: Could I have a moment?

Whereupon,

HELEN SCHENK

was called as a witness and, having been first duly sworn by Judge Schneider, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Katz) May we have your full name and your address, please?

A. Helen Schenk, 195-24 Jamaica Avenue, Hollis, New York.

JUDGE SCHNEIDER: Speak right up, please.

436 Q. Are you employed by the Starks as office manager; is that right?

A. Yes.

Q. On May 11, 1973, before you went out to lunch did you give anybody in the office instructions with respect to Jeffrey? A. Yes, I did.

Q. What did you say? A. I told Karen before I went to lunch, I said, "Karen, when Jeff comes in and I'm not back, tell him to wait for me because I have some papers to go to court, disposses papers, and I want him to do it."

Q. Did you then go out to lunch and come back? A. I left, yes, I went to lunch.

Q. About what time did you come back? A. Oh, must have been about 1 o'clock I came back, around 1.

Q. When you came back did you see Jeffrey in the office there?

A. No.

Q. Did you make any inquiry of anybody about him? A. Yes, I did.

Q. Who did you ask and what did you say? A. I said to Karen, I said, "Didn't Jeff come in?"

So she says, "Yes, he came in."

437 I said, "Well, didn't you tell him what I said to you?"

So she says, "Yes, I did", and she says, "but he left with Charles Thompson."

Q. What did you do after that? A. I said well, maybe he is still in the back, in the warehouse in the back.

So I went out, I ran out in the back and I yelled a few times, I yelled, "Jeff, Jeff" and nobody answered me. I got no response.

I went back into the office and I said to the girls, "Well, I guess he did leave."

Q. Did there come a time after that when you saw Jeffrey? A. On that day you mean?

Q. On May 11th. A. Yes, I went back to the office and I did what I had to do and then somebody came in, a tenant came in to pay the rent and we have to answer the door. The door is locked, so I have to get up and answer the door.

I took the rent and while I was standing there at the counter I happened to look out the window and I said to the girls, I said, "Here comes Jeff now in his car", and they all got up and we all looked out the window.

438 Q. Did Jeff come in or not? A. No, he didn't come in.

Q. What did you do then? A. Well, we all stood by the window, looked out and Jeff was turning by the office, and I said oh, I said, "There's more people in his car" and as they were turning I could see the guys.

I said, "Well, it is the guys there in the car" and I said, "It is Thompson and Roger and Huff" and Jeff was driving.

And then they pulled up in the back of the office, they pulled up and then I said, "Well, I guess they are coming in now."

So nothing happened and I said, "Well, I better look where they went".

So I went out in the back again.

Q. That is – A. In the back.

Q. The warehouse? A. In the warehouse.

Q. In the garage? A. In the garage, yes. I went through the warehouse and all the way in the other garage I went out and there was the car and they were all sitting in the car and it was parked there, right in front of the dump truck.

439 Q. Did you approach the car? A. Yes, I went over and I said, "Well, is this all you guys have to do, ride around in the car all day?"

And they just looked at me. The only one who said something was Charles Thompson.

Q. What did he say? A. He says to me, "I ain't doing any more work" and he was very nasty.

Q. Did you say anything to him? A. No.

Q. Then what happened? A. I just – left. I went away and I ran back into the office and I said, "Well, I better get a hold of Mr. Stark or Harold Stark."

Q. You located Harold Stark thereafter? A. First I tried to locate Mr. Stark. I called the Buildings Department.

Q. No, were you unable to locate Fred Stark but you located Harold? A. I located Harold Stark, right, and I said to Harold, I said, "Listen" –

Q. As a result of your conversation with Harold he came back, Harold came to the office? A. Right, he came to the office.

MR. KATZ: I have no further questions of this witness.

440 MS. JOHNSON: Could we have a few minutes, please?

JUDGE SCHNEIDER: We will recess until 25 minutes to 12.

(Short recess taken)

JUDGE SCHNEIDER: On the record.

CROSS EXAMINATION

Q. (By Ms. Johnson) Mrs. Schenk, could you tell us what your pay is? A. My pay?

MR. KATZ: Objected to. We admit she is a supervisor. What difference does it make how much she makes?

JUDGE SCHNEIDER: You admit that she is a supervisor?

MR. KATZ: She is office manager.

JUDGE SCHNEIDER: What is the connection?

MS. JOHNSON: I just want to establish her place in the hierarchy.

MR. KATZ: She is a supervisor, office manager.

JUDGE SCHNEIDER: Isn't that enough?

MS. JOHNSON: I think it may be relevant, but it is not absolutely vital.

I would like to know the answer because they –

MR. KATZ: I would like to know a lot of things too.

JUDGE SCHNEIDER: If the only purpose is to show the status of the witness, she is conceded to be a representative of management and a supervisor. I don't see any point in going further into it.

441 Q. What are your duties? A. Office manager.

Q. Could you expand on that? Tell us a little bit more about what you do. A. I tell other girls in the office what to do. I give them their assignments.

Q. How many other girls –

MR. KATZ: Objected to as immaterial, improper cross-examination.

MS. JOHNSON: Your Honor, I'm trying to establish her type of work basically, who she supervises and what she does.

JUDGE SCHNEIDER: You are trying to establish she may supervise some of the individuals who are involved in this case? Other than the office personnel?

MS. JOHNSON: I'm trying to find out what her job is and how it relates to the other people in the firm, right.

JUDGE SCHNEIDER: If it is for the purpose of showing supervisory

capacity with respect the persons who do not work in the office –

MR. KATZ: We concede that.

JUDGE SCHNEIDER: You concede that also?

MS. JOHNSON: What about the people who work outside the office?

442 JUDGE SCHNEIDER: Counsel just conceded that –

MR. KATZ: Not outside of the office.

JUDGE SCHNEIDER: That was my question, people outside the office.

MR. KATZ: She does not. That part of the question, reframe that, I have no objection.

Q. Do you supervise people other than ones who work in the office?
A. No.

Q. You testified previously that you wanted Jeff to do some work for you. What type of work does Jeff do? A. If there was no assignment from Harold Stark before Jeff came in he ususally told me what to do.

Harold gave me the orders and told me when Jeff comes into the office to tell him what to do.

Q. What kind of work did Jeff do? A. He did like labor work. Sometimes he worked with the fellows and sometimes he worked in the back in the warehouse. It depended what I got from Harold Stark, what he told me, I would tell Jeff then.

Q. But on some days you would ask Jeff to do things for you?
A. Well, I told Harold before he left that I had this to go and he says, "All right, when Jeff comes in you tell him to do so, he can do it."

443 Q. Do you know what Jeff's rate of pay is? A. Not offhand, no.

Q. Did he work steadily or did he come in some days and not other days? A. He worked part time.

Q. But did he always come in every day? A. Not every day. If he had tests he would tell me the day before "I'm not coming in, I have a test tomorrow, I'm not coming in".

Q. Did he always report to you if he decided not to come? A. I wouldn't say always but as a rule he would tell me.

Q. There might be occasions when he would not come in and you wouldn't have heard from him? A. Maybe only on very rare occasions.

Q. But he generally would call you and tell you he wasn't coming in? A. No, he wouldn't call. If he came in on a Monday or Tuesday he knew already his hours for the week. He would tell me, "I will come in every week at 1, I come in every day at 2" and then I knew.

If he didn't come in on a Friday he said, "I have a test on Friday, I come in Thursday, I'm out Tuesday."

Q. How long did Jeff work for the Starks? A. How long? I don't know. Offhand I don't know.

Q. Did you ever hear any complaints about his work? A. No.

444 Q. Let us turn now to the scene in the car you described on your direct examination. Do you remember that, you saw the car outside? A. Yes.

Q. With people in it? A. Right.

Q. You went over to the car? A. Right.

Q. The men were there drinking, weren't they? A. No, I didn't say they were drinking.

Q. Were bottles in the car, did you see bottles? A. I didn't see any bottles.

Q. Isn't it true they were just sitting there in the car? A. That is right, Roger Evans was sleeping. He was sleeping in the back seat.

Q. You mentioned that Charles Thompson said something to you. Did anybody else say anything? A. No.

Q. Did you say anything? A. No. I said, "is this all you guys have to do, ride around in the car all day?"

And the only response was from Thompson. He says, "I ain't doing any

more work", very nasty. Then I walked away.

445 Q. Nobody else said anything? A. No.

Q. Then you went and called Harold? A. Right.

Q. Did you tell Harold that you saw men drinking in the car?

A. I didn't say that, no.

MS. JOHNSON: I have no further questions.

MR. KATZ: No further questions.

JUDGE SCHNEIDER: If I understand your testimony correctly, Mrs. Schenk, you did not on that day see any one of these four people, Jeff, Evans, Huff or Thompson in the office?

THE WITNESS: No, sir.

* * * * *

447 HAROLD STARK

was called as a witness and, having been first duly sworn by Judge Schneider, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Katz) Mr. Stark, will you give us your full name and address, please? A. Harold Stark, 193-55 85th Road, Hollis Woods.

Q. Are you the son of Fred Stark? A. Yes.

Q. You are active in the management of the real estate business of your father? A. Yes.

Q. I want to direct your attention to May 11, 1973, that being the day where the incident with Charlie Thompson and the other three occurred.

On the morning of that day will you describe how work was assigned out and who gave out the work? A. Well, on the morning of that day – well, like usually they come to the office in the morning in the back by

448 the warehouse, the men gather.

About 8 o'clock I sent men out to different men. I sent out Jimmy, Charles Thompson and Roger Vans and Wayne Huff on a job and I sent out

Lawrence Moultrie.

Q. What was – A. I sent them to Farmers Boulevard, the exact address I'm not sure.

Q. Did you tell them what to do? Did you give them what kind of work? A. I told them before they left they should go there and clean up the inside and sent the dump truck with Charles Thompson and he carried the other two. Told them to go over there, clean the upstairs.

They had some loose rubbish which there was accumulation of rubbish downstairs too. I told them to clean that out and sent Lawrence Moultrie down further.

Q. Before you get to Moultrie, what if anything did you say to these three people that you sent to Farmers Boulevard with respect to the coal in the basement? A. I didn't say anything. Coal in the basement was to stay in the basement.

Q. You didn't say anything? A. Right.

Q. Did you give Mr. Moultrie or Moochie an assignment that day?

449 A. Yes, in the morning also.

Q. What did you tell him to do? A. Told him to go down on Farmers Boulevard on another job site which wasn't far away. It was one block down.

Q. Just a block away from where Charlie Tompson and the others – A. A block away on the opposite side of the road.

Q. What work did you give Mr. Moultrie to do? A. Well, I told him to go over and board up the windows. There's three windows. Some windows knocked out, so I told him to board them up, the storefront.

Q. Did they leave to go to the various job sites? A. Right.

Q. What did you do? A. Well, I locked up the office, made sure everything was locked up, and about half an hour later, 20 minutes, half an hour later I left.

Q. Where did you go? A. The first job site I went to was where Jimmy — Charles Thompson, we call him Jimmy, Charles Thompson was where Huff was, and I stopped at that job site where the dump truck was parked off the side of the street away from the job and I saw Wayne Huff, which he was sleeping.

Q. Where was he when you saw him? A. In the dump truck.

450 Q. You say the dump truck was parked where? A. Not on the avenue, off the avenue, right off the corner of the avenue. Not on Farmers Boulevard, right off the corner, right around the corner of the job site and he was in the truck.

I went over to him. I opened the door.

Q. Where would the truck have to be parked in order to take the rubbish out? A. To take the rubbish out you would either have to park in the front of the building or right in the back of the building where the two exits are.

Q. You are saying the truck was parked in neither of these two places? A. It was parked on the side of the street.

Q. What else did you observe? A. I opened the door, told him — I said, "What are you doing in here, why aren't you working inside?"

Q. Who were you talking to? A. Wayne Huff.

He just got up, just like came out, up out of a sleep seemed to me, very — he didn't know what I was really saying to him.

Q. Tell us what you saw and did. A. So I told Wayne, I said, "Come on with me".

451 I asked him first, I said, "What are you doing here?"

He said, "I'm waiting for the other guys", so I said, "Come on with me".

So he followed me and we went into the store which then I saw Roger Evans. He was — he was standing right up, leaning up against the wall with a broom and I said, "What are you doing in here? Why aren't you guys working?

He said, "Well, we are finishing up."

I said, "You haven't done anything here."

So I asked him where Charles Thompson is. He said he went out, went down the block.

So then I left them, went down the block, and I saw Moochie was down there and I saw the truck on the other side of the street.

I went over there and I saw what he was doing and then Charles Thompson comes out of the building. I said, "What are you doing over here? I told you to go over there to work over there".

He said, "I was helping Moochie." So with that I said, "Come on, get over there" and as he was turning away I asked Moochie, I said, "Moochie, did you ask him to come over here to help you?"

And Moochie said, "No, I didn't ask him to help me."

I said okay, so while going over there I told him, "Don't ever do that again."

452 Q. Going where? A. Walking from that job site, going back to the job site Jimmy Thompson was supposed to be across the street.

Q. The Farmers Boulevard side? A. Right, all on Farmers Boulevard.

Walked back with him and I told him, "Don't ever do this again. I sent you on one job site, you stay there. You don't help anyone else unless I tell you to."

So when we went back to the store I told him, "Let's clean up and do some work over here" and he said okay.

They started to take the broom and sweep the stuff together, I left.

Q. Did you have any conversation before you left with respect to the coal in the basement? A. No, coal – nothing, no, no.

Q. You had no conversation about the coal in the basement?

A. Nothing with the coal.

Q. Then you left that job site? A. Right.

Q. Did there come a time during the day when Helen Schenk contacted you with respect to an incident that happened sometime in the afternoon?

A. Yes.

Q. As a result of that contact what did you do? A. I got a phone

453 call to come back to the office.

Helen called me and told me that –

Q. Whatever she told you, then you went back? A. I went back to the office and when I reached – I didn't go right back to the office, I went down to the job site first, down to Farmers Boulevard. Stopped there and no one was there.

I went in. There was no work done at all, nothing finished.

So from there I went back to the office and I went inside the office.

I was told the guys are back here, they are not doing anything, they are here.

So I went in. I didn't see them so I came back out.

When I came out I went down, looked by the office and didn't see them.

I got back in my car and I started to go back down to the job site. I was going down to the job site, right around down the block about one block, it is a curved block and that is when I saw the car, the station wagon. Jeff, Jeff Maksymchak, he was driving. He was talking. So I stopped, I got out of my car and the two windows were open, the windows were open.

Q. The position of his car was near the garage or warehouse?

454 A. No.

Q. How far away was it would you say? A. I'd say it was a block, but a curved block. It was a sharp curve in this block. It is not a straight block. It is a rounded type of block where it rounds off to go down to straighten out later on.

I got out of the car, went up to him and I said, "Jeff", I seen Jimmy Thompson was by the left rear window and I asked him and I saw Roger Evans sitting next to him and Wayne Huff was in the car too.

Wayne Huff was in a state of – very incoherent state.

MS. JOHNSON: Objection.

Q. Don't give us your observation. Tell us what you said that gave you that conclusion or any conclusion. A. I said, "What are you guys doing here?" I said. I asked Jim, "What are you doing here?"

"Doing nothing."

"Why didn't you finish up the job?"

He said, "We are not doing it, we are not working there."

I said, "What are you talking about?"

And I still couldn't get a straight answer out of him.

So I said, "Roger, what is wrong with you?"

And he picked his head up and started to mumble to me and I said,

455 "You have been drinking." As a matter of fact, the alcohol, you could smell on Thompson's breath and you could see – I could see by Roger Evans, his eyes were plastered.

He looked up at me, mumbled and just passed out again.

Wayne Huff, I asked Wayne Huff, I said, "What is wrong with you?" And he nodded his head to me and he says, "We are done with the work", with something. I couldn't understand very clearly, couldn't understand him.

He passed out and I couldn't get nothing out of him.

So then I told him, "You have been drinking" and I said, "You didn't do the work" and I said, "You are fired" and I pointed to Jimmy, Roger and Huff.

I asked Jeff, I said, "What is wrong with you? Are you going to come with me or stay here?" And he didn't give me any reply, just wouldn't answer me.

I said, "If you don't want to come to work you are fired too."

Q. Did you leave? A. I got in my car and left.

Q. Did there come a time later on the same day when you approached the car again? A. Right, right.

Q. What time was this? A. Well, this was on a Friday, so it was
456 about 20 after 4, 4:30 this happened where they came to collect their pay.

I was outside, I had the envelopes for all of the men and Jeff comes up to me and I handed him his pay.

Charles Thompson came up and I gave him his pay and I asked him where is Roger.

He says, "We dropped him off."

I says – he says, "He told me to get his pay for him".

So I told him, "We can't give his pay to you, he has to get it himself."

So then I saw Wayne was still sitting in the car when I went over and it was parked very close to me then.

Q. What was the position of the car around 4, 4:15? A. This was right in front of the driveway. He pulled right up in the driveway.

Q. Whose car was it? A. Jeff Maksymchak.

Then I walked over and the window was open and I said, "Hey Wayne, here is your pay" and he looked up at me and just put his head – his head fell right out again. I shoved –

Q. His head fell what? A. Down again like this (indicating).

457 I shoved him a little bit and he said, "All right" and I put his pay on top of his – he was like this (indicating), and I shoved his pay here which it fell down to his lap and I said, "You got your pay". I don't know if he heard me or not. I don't think so.

He looked like he was out. Then I went back and paid the other guys.

Q. I want to draw your attention to May 16th, the day when the incident occurred with Felipe Ortiz. About what time of day did you approach

the place where Ortiz was working on May 16th? A. I think it was about 1 o'clock, quarter to 1, 1 o'clock.

Q. When you got there what did you do, what did you see? A. Well, I came over there and Moochie and Charles were together delivering furniture.

Q. Charlie who? A. Charlie Blair.

Q. Spell the second name. A. P –

Q. Not a B for boy? I though it was Blair. With a P? A. P-l-a-i-r.

Q. Is he presently working for you people? A. No.

Q. About how long has he not worked for you people? A. For us?

458 Q. Yes. A. Maybe three months.

Q. A few months you say? A. A few months.

Q. So you approached and you saw whom again? A. Lawrence Moultrie and Charlie Plair with the truck.

Got out of the car and then there was Ortiz was there and I asked him, I said, "Well, let us start cleaning up a little, let us clean up on the outside here. It is part of your job to take care of the outside."

He has a broken English, he has a speech impediment. It is hard to understand him but if you talk slow to him and it gets across to him, what I am saying –

Q. Let me ask you, prior to this day did you have occasion to talk to him about giving him instructions about things to do? A. Yes.

Q. What method would you use to convey to him what you wanted him to do? A. Talk to him very clearly and slowly. You have to talk very slow, one step at a time.

"You clean outside" and you have to get that established first with him.

"You clean the garbage inside" and you got to show it to him.

459 I showed it to him because you can't say "Do this" and expect him to

know what he is doing because he has to be shown because then he won't understand. So I showed it to him and told him.

Q. On May 16th now what did you show him and what did you tell him to do? A. May 16th, I told him he must clean up the outside, he should take a rake, told him tools downstairs, get some tools, shovel, pail and he nodded.

I said clean up the outside and I pointed to garbage, dog litter there too all around the bushes.

We got complaints from the tenants it was getting kind of messy because it is not many bushes, it is only a few foot area and also down maybe 15, 20 feet around the building, very short area in bushes, width about this size. It goes around the building.

So he says, "No, not my job, don't have to do".

Q. What language did he say those words to you in? A. He said it in English with a Spanish tone to it, not Spanish speaking but had a Spanish accent to it and a broken speech.

He has an impediment but he said it so many times, he says, "It is not my job, not my job, I don't have to do that."

460 I said, "That is your job, you have to clean." He says, "No, not my job."

I said, "It is your job to clean, clean here, clean inside, the hallway", and he shook his head to me, acknowledged like I was saying he knew what I was talking about.

I said, "You must clean". He said, "No, I quit, I quit, no my work, I don't have to do, I quit." That was it.

I didn't say nothing else. He went downstairs, came up and gave me the keys that he had.

Q. He gave you the keys? A. Right.

Q. What keys did he have? A. The basement keys to go to the

compacters and that is about it, front door key.

Q. Did you ever address the men with respect to drinking on or off the job? A. Yes, I have told them that – I have gotten them together in the morning and told all the men that there will be no drinking on this job or you can't drink on the job here, and that it was getting kind of out of hand with the working problem we were having with him.

They weren't getting the work done so I told them better cut down, no drinking on the job.

461 Q. With respect to the incident for example of May 11th involving the four people, to your best recollection how much before that date was the most recent time that you spoke to the employees about this drinking problem? A. May have been a week before. I think it was two weeks before. I got them together and made a speech.

Q. As best you can recall tell us what you said to them.

By the way, were you talking to anybody in particular or talking to all of the men in a group? A. Well, I was talking to all the men but I – for me to have the speech it was brought – a few men brought it to my attention I have to make a speech because it was getting out of hand.

Only a bunch of the men were really – really made me have to say the speech because I wouldn't know how to say it. Some of the other men don't drink, most of the men.

Q. What did you say? Tell us what you said. A. Well, in the morning I said it is getting out of hand with the drinking on the job. I said there is no more drinking on this job.

I said if anyone is caught you are going to be fired and reprimanded right away.

I told them that it is dangerous, if someone is working with you and you are drinking that they may get hurt because your ability of being drunk and you can't function right. That is what was said.

462 Q. Did you hear the incident this morning of one of the witnesses testifying about someone being carried or helped off a roof? A. Yes.

Q. Who was that? A. Who was being helped?

Q. Who was the individual? A. Wayne Huff.

Q. Were you there? A. Yes.

Q. To the best of your recollection when did this happen? A. It happened – it was in the summertime and that was about in '72.

Q. In '72? A. Yes.

Q. Please tell us what happened that you saw. A. Well, there was men working up on the roof. I was working, I was underneath the roof.

Q. Were you also working on the job at that time? A. Right, I was helping them along and one of the guys called me off the roof, Charlie Plair and which I went up on the roof and Wayne Huff was out laying straight on his back, turning his head, tossing his head back and forth. He couldn't stand up hardly.

463 When I picked him up a little and told the guys and said let us get him off the roof.

Charlie, he is about the biggest one there, he picked up with him which he got up on his own but we had to hold him. He wouldn't have been able to carry his own load.

We got him over the ladder and Charlie stood on the top and I went underneath him and we went down step by step, which I held on the bottom and Charlie was holding him up on top, and we edged him down the ladder.

He was giving some cooperation, not much.

Q. You got him down to the bottom of the ladder? A. Right.

Q. You got him down to the level of the ground? A. Yes.

Q. Then what happened? A. Then we sat him down. Well, he wasn't able to walk too good, so we sat him down.

Q. Where did you sit him down? A. Right around the corner

there is a step out of the way where the men were working. There is like a little place to sit, a step.

We sat him down there and tried to talk to him and said, "You can't work here no more, you're drunk."

He couldn't understand what I was saying, and he just leaned up against
464 the building and I said, "Let's leave him here until he sobers up."

So we let him out on the side of the building, laid on that day – I imagine he went home, I didn't see him.

Q. Not what you imagine, what did you do? A. Then I continued. The boys went back to work.

Q. You left him there? A. Right.

Q. Did you hear an incident with respect to an employee about something with the truck this morning? A. Yes.

Q. Who was that individual? A. That was Wayne Huff.

Q. Do you remember when that happened, to the best of your recollection? A. That was maybe a month ago.

Q. A month before the incident you told us about the roof?
A. Yes.

Q. Will you describe what you saw and what was done? A. Well, on Archer Avenue where we had two trucks backed next to each other, we were loading up and I told Wayne Huff to get up on the truck to take another truck and to get the garbage packed where he was walking from one truck to
465 the other truck. When he tried to get up he just went underneath the truck. He just fell underneath the truck which at that time I was away from the truck then.

When I came back I saw him. I helped him up but I didn't see him, how he tried to get on the truck.

Q. What did you see? A. I just saw him underneath the truck.

Q. You saw him underneath the truck? A. Right.

Q. What was done and who did it? A. Well, I went to see – I said, "Are you all right?" He said, yes, he is all right and then that was it. That is all I said.

Q. Did you ever discuss with any of the employees the union?

A. No.

Q. Did any of the employees ever discuss with you the union?

A. No, I didn't know anything about it.

Q. When for the first time did it come to your attention that Local 32B claimed to represent the men? A. On – it was – I think it was about the 14th or 13th.

Q. What was the source of that information, that knowledge to you?

466 How did you find out about it? A. There was a letter in the office.

Q. Who told you about it? A. My father told me about the letter.

Q. Did you hear George Peters when he was testifying in this case one day last week? A. Yes.

Q. Did you hear him testify with respect to the practice of your father picking him up in a Cadillac in the mornings? A. Yes.

Q. Would you be with your father on the occasions when he would be picked up? A. No. Once in a while when I didn't have my – when I wasn't in the car, once in a while he would take me but most of the time I would be in the office by myself.

Q. On Monday, May 14th, this is after the incident of May 11th involving the four people, and prior to the May 16th incident of Felipe Ortiz, do you remember you and your father being at 145th Street and Jamaica Avenue between 12 and 1 o'clock and Peters being there? A. I remember being – I remember driving my father to the job site. That was a Sanitation store, right.

Q. Did you see Peters there? A. I don't remember. He must have been there. I am not sure.

467 Q. Not must have been. If you don't recall –

* * * * *

JUDGE SCHNEIDER: All right, tell us what you saw and heard and did.

THE WITNESS: There was a lot of people there. I don't remember seeing him. I don't remember seeing him.

Q. You didn't see him on that day? A. Could –

MS. JOHNSON: Objection, your Honor.

A. That day or there right when we pulled up.

JUDGE SCHNEIDER: The objection is overruled.

A (Continuing) Right when we pulled up.

468 Q. On May 14th? A. May 14th.

Q. The Monday before Peters' employment was terminated?

A. Right, right, at the Sanitation. We saw him inside.

Q. Did you hear Peters' testimony that at that time your father said to him, "I fired four of your men Friday"? A. Right.

Q. Peters testified to that? A. Yes.

Q. Did your father in fact say to Peters at that time, "I fired four of the men"?

MS. JOHNSON: Objection.

A. No, he didn't.

JUDGE SCHNEIDER: Just a minute. The first time the witness will tell us what occurred.

MS. JOHNSON: Did we establish he was there?

THE WITNESS: I was.

JUDGE SCHNEIDER: Just a moment, don't answer a question when an objection is made.

If the witness needs refreshing his recollection you may do so. First he can tell us what was said and done.

Q. Tell us what was said and done on this Monday, May 14, 1973 between 12 and 1 o'clock at this location, 145th Street and Jamaica Avenue.

469 A. Well, we went – I brought my father there and I drove him this time and we went inside.

He told me the things that should be done and we were discussing things about the job. He told some of the men to get some of the material out, the stuff we don't need and that was it.

Then we had to go to another place.

Q. When you say we, who do you mean? A. Me and my father who I was with.

Q. Did your father tell Mr. Peters "You stabbed me in the back"?

MS. JOHNSON: Objection, your Honor.

MR. KATZ: I submit Mr. Peters so testified on direct.

JUDGE SCHNEIDER: Has the witness told us everything he knows?

Q. Is that all that occurred at that time?

MS. JOHNSON: He said that is all that occurred.

A. That didn't happen.

MR. KATZ: I think in addition to his conversation I think I have a right to ask these kinds of questions and either get the specific things that he did or did not.

I know it is all-encompassing an answer and the inference, but I still think I should be permitted to ask in addition.

470 MS. JOHNSON: Objection, your Honor. Mr. Katz is testifying. He is putting words in the witness' mouth.

MR. KATZ: I am asking whether in fact Peters made that statement or didn't make that statement.

MS. JOHNSON: The witness said he told all that had happened that day.

JUDGE SCHNEIDER: Has the witness exhausted his recollection? He has not as yet said this was all that occurred or not.

Q. Did anything else occur?

MS. JOHNSON: He said that was all that occurred.

JUDGE SCHNEIDER: Was there anything else that occurred besides what you told us?

THE WITNESS: When we were inside, after my father told a few men to take this stuff, the material out, we both walked out of the store and we both got into the car and both left.

I drove him some place else.

JUDGE SCHNEIDER: Is that what happened, that is all that was said?

THE WITNESS: That is all that was said because I was with him.

JUDGE SCHNEIDER: Proceed.

You may direct the witness' attention to the specific testimony of Mr. Peters if you wish.

471 Q. Do you recall Mr. Peters testifying the other day and saying on this May 14th around this time at this location while you and your father were there, your father said, "I fired four of your men Friday"? Did you hear him so testify the other day? A. Peters, right.

Q. Is it true, was that statement made by your father? A. Absolutely not true.

Q. Did you hear Peters testify the other day that your father named the four men as Wayne Huff, Jeffrey, Roger Evans and Charles Thompson? Did you hear him so testify? A. Yes, I did.

Q. Was it true, did your father mention those names on May 14th, 1974 at that time? A. Impossible. He was with me and he did not say that.

Q. Do you recall Peters testifying at that time and at that location your father said to him, "I fired the men for joining the union". Did you hear him so testify? A. Yes.

Q. Did it in fact happen? Did your father say that to him? A. I

said it is impossible. My father was with me. He didn't say it. Never mentioned anything about no union.

Q. Did you hear Peters testify that at that time again and at that location your father said to him that Peters was his man; did you hear him so testify in this case? A. Yes.

472 Q. Did your father in fact make that statement to Peters? A. I said no.

Q. Did you hear Peters testify in this case that at that time at that location your father said to him, "You stabbed me in the back, you can continue to work for me if you stay away from the union?"

Did you hear Peters so testify? A. Yes.

Q. Did your father in fact say anything like that? A. No, he didn't.

Q. Was there any talk about the union at all at that time between your father a[illegible]u were there with Peters? You are shaking your head. The reporter can't get that. A. Absolutely not, no.

Q. On the morning of May 17, 1973, that date when George Peters' employment was terminated, did your father pick him up that morning, do you know? A. No, he didn't.

Q. How do you know your father didn't pick him up? A. Because he came to the office.

Q. Who was in the office? When you say he came, whom do you mean? A. My father.

Q. Who came in after him? A. Well, about four, five minutes

473 while we were there we turned on the lights and four, five minutes Peters knocked on the door, the front door.

Q. You were and your father were in the office at that time?

A. Right.

Q. What happened when Peters came in? A. Well, he walked in

and then my father told him, he says, "You are a liar and I don't trust you. You weren't at the VA Hospital when you said you were."

He says, "You are fired" and let him go. That is when he walked in.

Q. Did Peters say anything? A. He didn't say anything. He just walked around and walked out. He just didn't walk up, he unlocked the door and then walked up.

Q. The day before he was fired did you see Peters? A. The day before?

Q. Yes, the day before? That would be the 16th? A. Yes.

Q. Where did you see him? A. I saw him coming out.

Q. Take your hand away from your mouth. A. I saw him coming out of this building, getting into his car and I was driving past.

474 JUDGE SCHNEIDER: Which building?

THE WITNESS: His building. Well, 201-15 Jamaica Avenue. He was coming out of his building all dressed up.

Q. Did you know where he was going at that time? A. That day?

Q. Yes. A. No. I thought he was going to the VA Hospital.

Q. Did you hear Peters testify in this case that on May 17, 1973 at around 7 a.m. your father and you came by his place at 201 to pick him up? A. The 17th.

Q. The day he was fired. A. Yes.

Q. You heard him so testify? A. Yes.

Q. In fact did you and your father pick him up that morning? A. Did not.

Q. Well, when he came in you testified on the morning of May 17th you and your father were there in the office? A. Yes.

Q. Then there came a time when Peters left? A. Shortly after.

Q. During the time that Peters was in the office on May 17, 1973 did you hear him testify in this case that your father told him to stay away

from the union?

MS. JOHNSON: Objection, your Honor, the witness hasn't had a chance to tell his story himself.

MR. KATZ: He did, he already testified previously that there came a time when his father – I don't want to paraphrase, whatever his father said to him and then he left.

Now, I'm going into the same thing after he told us what happened.

JUDGE SCHNEIDER: Have you told us everything that occurred on that day?

THE WITNESS: The day Peters walked in?

Q. May 17th, the day he was fired. A. I told him everything I know.

JUDGE SCHNEIDER: Everything that happened?

THE WITNESS: That morning, yes, sir, that was it.

JUDGE SCHNEIDER: Proceed.

Q. Do you recall Peters testifying in this case that on May 17th, in the morning after you and your father picked him up and you came into the office, your father told him — A. We didn't pick him up.

Q. This is what he said: "I told you to stay away from the union". Did you hear him so testify? A. Yes.

476 Q. Did your father in fact say that to him? A. Did not.

Q. Did you hear Peters testify that on May 17th, the same time your father said to him, "Evidently you went to the union yesterday", did you hear him so testify? A. Yes, I heard.

Q. In fact did your father say anything about that? A. Nothing at all.

Q. Will you describe for us what Peters' duties were in connection with the employees of your company? A. What he did? Well, he was instructed by me or my father what to do on the job and he was in charge of

the men on that job.

Q. When you say he was in charge tell us what he was doing.

A. Well, he had responsibilities of making sure that they don't drink, they keep working, that they don't wander off. That they stay on the job and keep working, that they do it the right way, the way I showed it to him to tell them to do.

If they weren't working or weren't doing the job he was to fire them.

Q. In fact did Peters ever fire any employees, to your knowledge?

A. Yes.

477 Q. Will you describe the incident or fix it in time as best as you can?

A. I wasn't there but must have been about a year and a half ago, two years, a year and a half –

MS. JOHNSON: Objection, your Honor.

Q. If you weren't there how did it come to your attention?

A. He came back to the office.

Q. Who came back? A. Mr. Peters at the end of the day and told me –

Q. He told you? A. Right.

Q. What did he tell you? A. That he discharged I think it was three men, I think it was. He discharged the men, that they were fooling around and weren't working. They were kids, I don't know if you call them kids.

Q. Keep your voice up. A. I don't know if you call men kids. Three boys working there, weren't that old.

Q. In addition to the salary that Peters received did he receive an apartment rent free? A. Yes.

Q. Did any other employee receive an apartment rent free? A. No.

478 Q. Did he have to pay for his utilities? A. No.

Q. Did he get free utilities and the use of the apartment? A. Yes,

with the apartment.

Q. You testified with respect to certain incidents about Wayne Huff. Were there any incidents in connection with Roger Evans? A. Roger Evans?

Q. Yes. A. Yes.

Q. Did you ever discuss with him any drinking problems? A. Yes.

Q. Did you ever take any action in connection with Roger Evans concerning his drinking problems? A. Yes.

Q. What happened and fix the time as best as you can. A. All right, there was a time period. The time period was maybe two, three months before – I'm not sure approximately how far back. He was –

Q. Two, three months before what? A. Three months before he was discharged. He was drunk on the job and I let him go.

479 Q. How did you know he was drunk? Did you see it? A. Yes, I saw him, I saw him. Matter of fact, it was on Hollis Avenue.

Q. What did you do? A. Well, I sent him home. I sent him home that time.

He came back. This was on a Saturday. He came back on a Monday and asked if he could come back. I said you can have one more chance.

I let him come back. He kept asking could he come back.

Q. I want to draw your attention to the Monday after May 11th when Evans' employment was terminated and you testified that he wasn't in the car and his brother-in-law asked for his pay and you wouldn't give it to him. Am I right about that? If I am wrong correct me. A. When Charles Thompson, Jimmy Thompson came up he says, "I will take the pay for Roger Evans." He said, "For Roger."

So I said no, he has to be here, where is he? "I can't give it to you."

He said, "We dropped him off".

Q. You related that. Did he come in on Monday, the following Monday,

Evans? A. Right, Roger Evans came in on Monday.

480 Q. Did you have a conversation with him? A. It wasn't too much of a conversation. He walked up and said – I gave him his pay. I said, "Here's your pay. You know you were fired" and he says, "Yes, I know. Could you give us another chance?"

I said, "No, I gave you your last warning already and that is it."

He says, "Couldn't you give me and Jimmy another chance?"

I said, "No, that is it."

I said, that is your last chance you had.

Then he walked away. That was it.

Q. With respect to the incident of May 16th concerning Felipe Ortiz, you heard Mrs. Peters testifying in this case? A. Yes.

Q. Was she there at the time of the incident? A. In that area she was.

Q. When you say in that area, will you describe what you mean by that? A. We were on one side of my car, I was telling – I was talking to Ortiz, and she was on the other side of the car approximately about ten feet, five feet, coming – she wasn't even standing there, she was walking towards –

Q. I'm sorry, somebody sneezed and I didn't get that. A. I would say five feet, ten feet on the other side of the car.

481 * * * * *

CROSS EXAMINATION

Q. (By Ms. Johnson) How old are you? A. I'm 22.

Q. Would you tell us about your education?

MR. KATZ: Objected to as immaterial.

JUDGE SCHNEIDER: Overruled. A. I went to high school, graduated.

Q. Where did you go to school? A. Henley.

Q. Did you go to college too? A. No.

Q. When did you graduate?

MR. KATZ: Objected to.

JUDGE SCHNEIDER: Overruled.

A. I think it was '71. No, '70. Wait, hold it. It was 19 – it was 19 – '69 or '68, I'm not sure which year. '69 I think it was.

Q. What did you do after that? A. After that I worked with my father.

Q. So in 1969 you started working for your father? A. No, I

482 was working with my father all the time, even when I was 13. Any chance I got between school, after school I used to work with my father.

Q. When you started working for your father were you on top, were you giving orders or did he give you orders? A. He used to tell me what to do and used to tell the men what to do and I worked my way up.

Q. I guess I didn't understand. Your father told you what to do when you started working for him? A. Yes, when I was 13? Surely.

Q. When you got out of high school did he tell you what to do? A. No, we discussed things more like I told – if it was – told me what to do?

Q. Yes. A. Yes, we discussed things. Told me what to do. We mutually agree on things more like. It wasn't like –

Q. In the morning when you first started working for your father was he the person who gave out the job assignments? A. Not really, no. I did too. He did sometimes, I did sometimes.

Q. So when you first started working for your father when you were 18 you gave out the orders? A. Right.

483 Q. Isn't it really true that you and your sister really took instructions from your father? A. No, it isn't. It is not true.

Q. You are telling me that your father doesn't run the business?

A. Sure he runs the business. Which way, in which way do you mean run the business? I mean instruct –

Q. Does he give you instructions? A. Yes, he does give me instructions.

Q. Does Helga give you instructions?

MR. KATZ: I'm sorry?

Q. Does Helga? A. No.

Q. Are you aware of any times that Peters called in the office to talk about men who were refusing to work? A. I think he called in one time.

Q. Will you tell us about that? A. This is – I think he called in one time to say there were some men not working and I told him if they were not working he could let them go. He didn't have to call, he could let them go.

Q. Did you talk to him or your father? A. No, I was in the office at that time. I remember speaking to him because he called up about the men.

Q. Did you talk to him or did your father talk to him? A. No, I
484 did. I talked to him.

Q. On that job you testified where Peters discharged three young men or two young men, can you tell us how old they were? A. I don't know their ages. I think they were about 17, I'm not sure.

Q. Were they part time workers? A. No, they came to work, they came for the summer. I think it was in the summertime.

Q. They worked for the summer? A. For the full time.

Q. Then they went back to school? A. I don't know if they went back or not.

Q. But they just worked for the summer? A. I'm not sure they had plans forever or just for the summer. In other words, they were full time.

Q. Did Peters ever fire any regular full time employees? A. As far as I know those three, he fired three, those three men were full time employees.

Q. Did he fire anybody else? A. Did he fire anybody else? He recommended, he told me one time these guys weren't working out in the morning one time.

Q. Who and when was this? A. Oh, when – maybe a year and a half ago, two years ago, a year and a half.

485 Q. How do you know it wasn't working out? A. I don't know their names, these are new guys come on the job. He said they are not so hot, they don't work so good, so we – they can't work with them and then we let them go.

You know, if they can't work.

Q. You don't remember? A. No, I don't remember. There's a lot of them come and go.

Q. On that day you sent out Wayne Huff and Charles Thompson and Roger Evans to Farmers Boulevard. Did you know there was water in the basement? A. Yes.

Q. Did you know there were ashes in the basement? A. Yes.

Q. When you came back to the office that day did the men tell you that the job was too much? A. When they came back to the office that day?

Q. That day when you came back to the office and talked to them by the car?

You testified you talked to the men by the car? A. It wasn't by the office.

Q. I'm sorry, by the car? A. Yes.

Q. Did the men at that time – A. They didn't say nothing.

486 There was – Jimmy always says "I'm not going to do it", that's all I

got out of Jimmy.

When Huff nodded his head, mumbled, passed back out again and the same thing with Thompson.

Q. Is that all that was said then? A. And what they said to me?

Q. Yes. A. That was it.

Q. Are you saying they were drunk? A. Yes.

Q. Did you see any bottles in the car, cans in the car? A. No, I didn't, but I smelled alcohol.

Q. You didn't see anybody drinking? A. No.

Q. How close were you to the car? A. I was bending down looking in the car, the two windows on the driver's side. Jimmy – Thompson, Jimmy Thompson.

Q. Thompson was driving? A. No, Wayne – Maksymchak was in the driver's seat. It was his car as far as I know, his car and Jimmy Thompson, Charles Thompson was sitting right behind him and both windows were open and the back window by Charles Thompson, that is the window I was looking in.

Q. You testified before that Mrs. Peters was about five away on that
487 May 16th when you had this conversation with Mr. Ortiz? A. Yes.

Q. How far am I from you?

Can you hear me? A. Yes.

Q. How far away would you say I am from you? A. How far away?

Q. Yes. A. I would say you are seven feet.

Q. But you can hear me okay? A. When you are addressing me, yes.

Q. You testified before that you helped Wayne Huff come down from a roof one day. Do you remember that? A. Right.

Q. Did Huff come back to work for you after that? A. No, I fired him.

Q. Did he come back to work later? A. He later on came back and asked for his job back. He didn't just come back.

Q. Did you hire him back? A. He was almost begging for his job back. He said he wasn't going to drink again.

On the conditions he wasn't going to drink. I hired him back.

488 Q. When you dropped your father off at 145th and Jamaica where did you park your car on May 14th? A. Where is this?

Q. On May 14th when you dropped your father off at 145 and Jamaica? A. I didn't drop him off. I parked the car and we got out of the car together. There are meters right in front of the store.

Q. Did you have to put some money in the meters? A. I don't remember that. Sometimes I put money in the meter, sometimes I don't. I couldn't tell you I put it in or he did.

Q. Can you tell me again what happened that day? A. We went inside. He was telling me things about the job inside and we were discussing what had to come out, out of the building, what stuff could be taken out of the building, stuff wasn't needed any more, excess material we had there to take it out.

Told some of the men what to put on the truck, what could go out, we didn't need any more, and that was about it.

We looked over the job to see how it was coming along and we both left.

Q. Is it a big job? Can you describe the building? A. It is a store we were making ready for a tenant to move in and putting sheetrock

489 up. It was a job.

Q. Did you each go around and look at the job? A. Yes. Sometimes we both go together, sometimes we go singly.

Q. On that day did you go around and look at some of the job or your father looked at some of the job? A. We had to go some place else. We stopped on that job to look in.

Q. What did Peter say to your father on that occasion in your presence? A. In my presence?

Q. Yes. A. Say where?

Q. On that May 14th when you were at 145th and Jamaica? A. To my knowledge, nothing.

Q. Did your father say anything to Mr. Peters in your presence? A. No.

MS. JOHNSON: No further questions.

MR. KATZ: I do have redirect.

REDIRECT EXAMINATION

Q. (By Mr. Katz) Were you interviewed on three separate occasions by representatives of the Labor Board and they asked you about the case and you gave answers and you made statements and you signed them? A. Yes.

490 MR. KATZ: No further questions.

MS. JOHNSON: No further questions.

JUDGE SCHNEIDER: Mr. Stark, directing your attention to May 11th, the afternoon of that day, from the second occasion that you saw Thompson and some of the other men at the time they came for their pay, this I understand was about four or four-thirty in the afternoon?

THE WITNESS: 4:20, 4:30, yes.

JUDGE SCHNEIDER: I'm not sure of the sequence of events there. Where did this conversation take place, in the office?

THE WITNESS: At 4:20 or 4:30?

JUDGE SCHNEIDER: That's right.

THE WITNESS: No, I was – about 4:20, 4:30 I was, I had the envelopes to pay the men.

JUDGE SCHNEIDER: Where were you?

THE WITNESS: When the men come in I usually go outside in the garage and give it to them as I see the men. There was no procedure that I

had to stay in the office.

I usually take the envelopes out.

I was out by the second garage. There's two garages together by the office. I was by the second garage, right by the garage door when the trucks come in.

This is what you want to know more what happend?

491 JUDGE SCHNEIDER: Yes, what happened?

THE WITNESS: I was standing right by the garage doors waiting for the trucks to come in.

As the trucks pulled in, I believe the trucks were all in and then Jeff Maksymchak pulled up with a station wagon, right up in front.

He stood there and then Maksymchak came up, Charles Thompson came up and I gave him the pay, didn't say anything.

The Thompson, Charles Thompson said "Roger told me to take his pay", to receive his pay for him and I said "I couldn't give you his pay out. He has to collect it himself".

I said how about Wayne?

They didn't say anything, so I walked over to the car where Wayne was and he was right by the window and this was on the opposite side of the driver's side now.

The window was rolled down and he was, I don't know, folded up manner like this (indicating).

I pushed him and I said "Here's your pay."

He brought up his head, looked at me, nodded his head and fell out, just fell down again. So I took it and showved it up. I said "Here, you received your pay."

And then I walked away from the car.

Then I pushed the thing, I saw it fall. I believe it fell into his lap that time. Then I walked away and paid the rest of the men.

492 JUDGE SCHNEIDER: This car was a station wagon?

THE WITNESS: Station wagon.

JUDGE SCHNEIDER: All of them came back in a station wagon?

THE WITNESS: Not all of them. At 4:30 Roger Evans, Charles Thompson came in and asked for Roger Evans' pay.

JUDGE SCHNEIDER: Those who came back all came back in the station wagon?

THE WITNESS: Right.

JUDGE SCHNEIDER: Did anything else happen at that time with respect to those men?

THE WITNESS: The same day?

JUDGE SCHNEIDER: At that same time after you dropped the check in Wayne Huff's lap?

THE WITNESS: I don't know what they did after that. They got back in the car and drove off and later I told you that Monday.

JUDGE SCHNEIDER: I'm sorry, have you finished your answer?

THE WITNESS: I don't know if it was relevant. Roger Evans came in on Monday asking for his pay.

JUDGE SCHNEIDER: Yes, you told us about that.

Now, on May 16th when you fired the men what time was that?

THE WITNESS: May 16th?

493 JUDGE SCHNEIDER: I'm sorry, May 11th.

THE WITNESS: What time was it?

JUDGE SCHNEIDER: Yes, what time was it that you fired them?

THE WITNESS: I must have been about 2 o'clock.

JUDGE SCHNEIDER: About 2 o'clock?

THE WITNESS: Quarter to 2, 2 o'clock.

JUDGE SCHNEIDER: When you paid those men on that afternoon – how are those men paid, salary or by the hour?

THE WITNESS: They are paid by the hour.

JUDGE SCHNEIDER: By the hour?

THE WITNESS: Yes.

JUDGE SCHNEIDER: To what hour did you pay them on that Friday?

THE WITNESS: I think when I went back to the office, told them to make the envelopes up until 2 o'clock.

JUDGE SCHNEIDER: Up until 2 o'clock, the time you fired them?

THE WITNESS: Right.

JUDGE SCHNEIDER: You testified that on a number of occasions you told the crew not to drink on the job.

I notice that you said on this job.

Did you only do this with respect to particular jobs or did you mean all jobs?

THE WITNESS: I was meaning by referring to working for us as a job,
494 not this one job, as a job as a whole.

When they go out on a job, they are not to drink at all when they are working for us.

JUDGE SCHNEIDER: Any job on which they were working for you?

THE WITNESS: Right.

JUDGE SCHNEIDER: It wasn't that you permitted them to drink on some jobs and not on others?

THE WITNESS: No, they couldn't drink on any job while they were working for us.

JUDGE SCHNEIDER: When Mr. Katz was asking you about the incident on May 14th at 145th and Jamaica Avenue concerning the statements which Mr. Peters said your father made at that time, when Mr. Katz first asked you about that you said that Peters wasn't there and then you seemed to have some difficulty making up your mind about it.

In view of the nature of that incident I am curious as to know why you

weren't sure about it.

THE WITNESS: I think I understood his question to be when in front of the building he was not there that I know of. Inside I think he was there. Inside he was but outside I did not see him on the outside when we came up.

JUDGE SCHNEIDER: You ultimately were quite sure that Peters was there.

THE WITNESS: Yes.

495 JUDGE SCHNEIDER: When you were first asked about that you said no.

THE WITNESS: Not in front of the building. The way I understood it. I thought he meant in front of the building where he said we saw him.

When he took my father – Peters said in his testimony he took my father on the side which he couldn't have because he was not in the front of the building when we pulled up.

I went with my father and I was with my father all the time.

JUDGE SCHNEIDER: You say then you simply misunderstood the question?

THE WITNESS: Yes.

JUDGE SCHNEIDER: How far away did Peters live from the office?

THE WITNESS: A block and a half, a block, at block and a half. Wait a minute, it could be two.

JUDGE SCHNEIDER: Peters you say was a foreman?

THE WITNESS: Yes.

JUDGE SCHNEIDER: Who is your foreman now?

THE WITNESS: Well, right now no one. I'm on the job more now.

JUDGE SCHNEIDER: You are on the job more?

THE WITNESS: Yes, I stay with these guys more now.

496 JUDGE SCHNEIDER: How many employees do you have which you have to supervise?

THE WITNESS: Well, there's – it ranges. In the wintertime it is slower. When the job comes more steady it gets more men. Sometimes it is the range of six men and it could be 18 men.

JUDGE SCHNEIDER: 6 to 18?

THE WITNESS: 6 to 18. It could be we have a lot of work if we are building, we could have some more. It ranges, depending on the work.

JUDGE SCHNEIDER: Did Peters go from job to job supervising men or did he just stay on one job?

THE WITNESS: No, he would go, he would be sent to one or two jobs to do the work. Sometimes it would range two from day to day. He would be either on one job or a couple of jobs that we would send him on and he would have to go to these couple of jobs.

JUDGE SCHNEIDER: Would it always be with the same crew?

THE WITNESS: If the crew would range. It would be different men.

JUDGE SCHNEIDER: You mean on any particular day he might be sent on one job with one group, with a crew and then also sent on a different job with a crew?

THE WITNESS: He could even be sent on a job where he drops the
497 men off there and continues on another job with the other men and he will go back and check up what the other guys are doing too.

The jobs weren't far away from each other. It was close by. It wouldn't be that many men. About –

JUDGE SCHNEIDER: Would you expect him to supervise two different jobs at the same time?

THE WITNESS: Sometimes I gave him two jobs to do, split the men up.

I gave him, I may have gave him six, seven men and then told him, you know, take care of these jobs.

If he took two, three men on the job and put two, three men on the job which every way he did it, the job got done.

JUDGE SCHNEIDER: Was he expected to work on these jobs too?

THE WITNESS: With the men.

JUDGE SCHNEIDER: He was expected to work with the men?

THE WITNESS: Yes.

JUDGE SCHNEIDER: If he was supervising more than one job he couldn't be working on more than one job at a time.

THE WITNESS: Well, when he is on the job, whatever job he is on he is to work. When he is there, not to just stand there and watch because then the supervisor, the men are not going to work too hard if he doesn't
498 help along.

If I go on a job I jump in there and work too to keep the men going.

JUDGE SCHNEIDER: If he was given several jobs to do did he have the authority to leave one job and go to another to see how the men were doing in the other job?

THE WITNESS: No. Well, it would be maybe two jobs. If I say do these two things he may have taken those five men or six, whichever, and split them up on his own and do it.

If I come to a job and see where are the other men, he would say I told them to start on the job, not like I sent him on a bunch of jobs, you do this and this. A couple, two jobs maybe the most I would send him and I say you can either take a whole crew and do it altogether or he may take them and split them up.

Like if there's two basements next to each other, two separate jobs, but he may take them and split them up, too many men on the job.

As long as the job gets done.

JUDGE SCHNEIDER: Did he have authority to float from one job or to another to see that they are being done properly?

THE WITNESS: Yes.

JUDGE SCHNEIDER: He did?

499 THE WITNESS: Yes.

JUDGE SCHNEIDER: How about the men's pay, did he have any authority over that?

THE WITNESS: On what they make?

JUDGE SCHNEIDER: That's right.

THE WITNESS: No. He was to see they don't drink on the job, that the keep on working and that the work is kept on going.

JUDGE SCHNEIDER: You say you spend more time on the job than you di then and that is the reason you don't have another foreman?

THE WITNESS: Yes, that's right.

JUDGE SCHNEIDER: Well then I take it you go from one job to another to see that the men are performing the work?

THE WITNESS: Right. Well, right now at this time we are doing jobs where we need mostly all the guys at one job, so it is not that many.

See, on occasion it doesn't mean it is that many jobs. One day we will have all the crew at one job and maybe the next day we will have two jobs to do.

See, we are working for ourselves really so it wouldn't be that many job sites. It is, two, three job sites and they are all in the same area, so we can go from one job and be back within 15 minutes to another job, five minutes traveling time really, you know, keep going back that way.

500 JUDGE SCHNEIDER: You say you spend more time on those jobs than when Peters was the foreman?

THE WITNESS: Right.

JUDGE SCHNEIDER: What did you do the rest of your time?

THE WITNESS: What do you mean, when he was foreman?

JUDGE SCHNEIDER: If you are putting in more time now you put in less time before. What did you do with your extra time when Peters was there?

THE WITNESS: I was able to stay with my father more, work in the office, take care of things a little bit more and more the business otherwise.

JUDGE SCHNEIDER: How about Mrs. Peters, was he an employee of the company?

THE WITNESS: No.

JUDGE SCHNEIDER: She was not?

THE WITNESS: No.

JUDGE SCHNEIDER: I think she said here that she managed the apartment house, something in connection with that. You say that is not so?

THE WITNESS: No, it isn't.

JUDGE SCHNEIDER: On this occasion, the Ortiz incident, you say Mrs. Peters was in the area.

Was she close enough to hear what was being said?

THE WITNESS: She was on the other side of the car. I was on the
501 driver's side and when I was talking to him.

Now, she was on the other side of the car. I'd say about five feet away from the car.

Now, to understand Ortiz you have to speak slowly and clearly to him and you have to be facing him so he sees what you are saying to him.

He has a speech impediment and he also, you know, to understand him you have to be looking at him and speaking to him slowly and even use your hands too, being that you have to speak to him very slowly and clearly and facing him, go very slow in what you are telling him.

That is where I was to him and she was five feet away, in the area.

JUDGE SCHNEIDER: That would take care of Ortiz but how about you? Was she close enough so she could have understood you when you were speaking?

THE WITNESS: Well, if she heard me, yes.

JUDGE SCHNEIDER: She could have heard you?

THE WITNESS: Right.

JUDGE SCHNEIDER: That is all. Do you have any further questions, Mr. Katz?

MR. KATZ: No.

RECROSS EXAMINATION

Q. (By Ms. Johnson) On that day with Ortiz were you speaking clearly and slowly? A. Yes, I repeated myself quite often.

502 Q. Who was the super in the building that the Peters lived in?

A. That Peters lived in? There was none.

Q. What was Peters' pay? A. Peters' pay? Well, he had the apartment. I'm not – I would have to look up on the records to see his exact pay.

Q. When the men came back on Friday, May 11th you testified that they got their pay.

Had they sobered up at that point? A. Well, the one, Jimmy, I still can smell liquor on him. I didn't say he was sleeping. He was the one who told me.

I didn't see Roger so I don't know how he was sober. I don't know if he was or not. I didn't see Roger and I saw Wayne Huff in the same condition that I saw him when I spoke to him in the car.

Q. What about Jeff Maksymchak? A. He didn't answer me. I didn't say Maksymchak was drunk. I told Maksymchak are you coming with me? What is going on?

He did not give me any reply, he did not come with me and that was it.

Q. Do you drink? A. No.

Q. When did Roger Evans come in to get his pay, do you remember?

503 A. Roger Evans?

Q. Yes. A. It was on a Monday.

Q. You are sure it wasn't Saturday? Could it have been Saturday?

A. On Saturday? No, it was on a Monday.

Q. What did he say to you? A. Because I remember putting the envelope back in the office and told him on Monday, I had to ask the girls where the envelope was again.

When he came in I told him he was out and so I went out and gave him his pay.

Q. What did he say again that day? A. He asked me for his job back and if Charles, Jimmy could have his job back. Yes, first for him and then he says also Jimmy and I said no, that was the last time.

* * * * *

504 JUDGE SCHNEIDER: * * *

Ms. Johnson, did you wish to argue the case orally?

MS. JOHNSON: I would like to make a short closing statement, and I also wish to submit a brief.

I think the facts of this case are essentially very clear, that there was an organizing drive among the employees of Fred Stark and his related corporations in the spring of 1973.

They signed cards for the union and the union sent a letter to Mr. Stark requesting recognition.

Mr. Stark received that letter on May 10, 1973.

The very next day four of the men who signed cards were summarily discharged while they were engaged in a considered activity. Within a week six of the seven men who signed cards were discharged.

The following discharges were on May 14th and May 16th. We had testimony that both Peters and Bishop were interrogated concerning their union activities.

Both were warned to stay away from the union.

Maksymchak was told that he could get his job back if he stayed away
505 from the union.

Clearly we have anti-union animus, we have warnings, we have interrogation, and I can see no other reason for the discharge of these men in the fashion that happened other than their union activities.

In assessing credibility I would like to request that you consider the lower social economic status of the employees, that some of them have language difficulties and that Mr. Peters did his time in prison and he was released and has been supporting his family since then.

I have nothing further.

JUDGE SCHNEIDER: Mr. Katz?

MR. KATZ: I was going to reserve my comments for a brief but I would like to make some short statement.

You have a situation here where in the month of April, '73 this employer, based on this record, voluntarily recognizes this union and enters into a contract for other units in his business.

There is no prior history of this employer and along comes May 11th and I suggest to you, sir, that what happened here is the following:

We don't deny we received a letter. These men used as a pretext it was hard work that day and one of the taller fellows testified on direct testimony that he had lifted these things, 30, 35 times before he had done this work and I suggest to you, sir, that what happened is unfortunately these fellows figured that they thought they had the company over a barrel.

You have the testimony here of one of the office girls where Charlie Thompson says "I have had it, I quit."

Jeff came to work that day and I think let us take Jeff because I think his case is symbolic of the whole attitude of these people.

He sat in the office there, he wasn't there to play checkers. He came in there to work.

All of a sudden along comes Charlie Thompson and pulls him out and then they go play and kick around for a couple of hours.

Now, if Jeff intended to work he would have stayed there. It may be Charlie Thompson has control over him, I don't know. He is a much older man.

These fellows, according the Charlie Thompson, when lunch was over they came back to the office. According to this – I don't recall his name, but the heavy set fellow who was part of the crew, he says they went back and they worked awhile and then they came to the office.

I suggest what happened here is very unfortunate. These guys say we are going to pull rank, so to speak.

Now, what testimony do we have that up to this point the company knew that these men were in the union? We don't have any in this record.

507 All we have got in the record at the point of May 11th is the receipt of the union letter and all we have is the business representative of the union stating that in a conversation the company called him when they got the letter.

I think this again shows an attempt that a meeting was set up. I think if you look at the bonafides of this kind of a situation and say particular because of the kind of work that is involved here, I don't think that they were as hep as the average blue collar worker. I don't think that a more sophisticated employee would have done some of the things or thought that they had muscle now where they didn't have it before.

So you have got a situation as I see it from the overall picture in this case where these fellows as Charlie Peters said, we have had it, we quit, I quit.

Now, it seems to me that an employer can only fire a man for any reason but union activity. You only have in this case self-serving statements.

I want to analyze Peters' statement for a minute. Peters is the most sophisticated in my opinion of the 8a 3s here.

It seems to me so incredible with a man with this kind of a record, and I'm not saying anybody with a record can't rehabilitate himself, isn't entitled to work for a living. We are not saying that.

508 With a fellow who is called a liar who admitted that he didn't go to the VA, that he took the day off. This again is symptomatic of these fellows. They want to go down to the union they could have done it on their own time.

They didn't have to lie he was spitting blood and going on for years and looking for sympathy. Peters now put words in the mouth of respondents "You stabbed me in the back."

This reminds me, and I have only been practicing close to 38 years before the Board of the early days of the Act when employers were stupid and unsophisticated and they pulled this kind of garbage.

I honestly think when you look at the record, and we intend to do a job on the question of credibility in the issue, I think that a brief is very important, and I think you will come to the conclusion that what happened here is that these fellows manufactured this case.

This employer, and I asked the questions, the employer made these available to the Board, they gave statements, gave lengthly statements. They were examined.

Now, it seems to me that also has to be weighed in this overall situation of whether an employer is cooperating and an employer takes the position "I won't cooperate, do what you want."

509 That leaves the one issue here, the discharge of May 16th of Felipe Ortiz.

I think the best proof of this chap, and I don't say this derogatorily because I represent a great many unions and still represent them and either fortunately or unfortunately I see both sides of the case.

This fellow blew up on the witness stand. I think that is his nature. When he was told to take, and you decide whether he was told to pick it up by his hands and we have in his case an employment insurance record.

Not a work about picking up that dog manure with his hands, and it just didn't follow in order.

He said "I ain't going to do it, I ain't going to do it" and that is it.

I again say he was all exicted about it and he said "I quit, no do the work."

I think basically when you add up the whole case, I don't think you have got the quality of the evidence to make out a case of 8A 3's in this situation. For that reason I respectfully request that the complaint be dismissed.

JUDGE SCHNEIDER: There is one thing I forgot to ask, Mr. Katz.

How many people were working here at this time in this operation for Mr. Stark?

510 MR. KATZ: I will find out. I don't know but you were talking in May of '73?

JUDGE SCHNEIDER: That is right.

MR. KATZ: Mr. Stark tells me about 18.

JUDGE SCHNEIDER: Would you accept that, Ms. Johnson?

MS. JOHNSON: No.

JUDGE SCHNEIDER: You would not?

MS. JOHNSON: No. Ten men.

We are talking about the roving crew and we say 10.

MR. KATZ: Two separate things. There was an affidavit submitted to the Board agent in connection with the 85 allegations made which resulted in a dismissal and you got affidavits by respondents.

They are listed for the week ending May 11th of '73, 17 people.

Now, the letter of dismissal I think is in evidence and it indicates that they didn't have a majority.

According to their story they had six or seven people signed up.

There had to be at least 13 people. They didn't have a majority.

We say that the number is 18.

JUDGE SCHNEIDER: Ms. Johnson, you say that figure is too high?

MS. JOHNSON: I would like to know the names of those 18 men,
511 please.

JUDGE SCHNEIDER: Would you speak to Ms. Johnson, please.

MR. KATZ: I might point out again that an affidavit was given dated January, it looks like the 2nd or 3rd, '74 by Harold Stark to the Board here listing the 18 people and Helga came over to me and told me they are taken from the payroll of the company.

Those were the people that were working that week.

* * * * *

HAROLD STARK

having been previously sworn resumed the stand and testified further as follows:

JUDGE SCHNEIDER: Mr. Stark, consider yourself still under oath.

512 REDIRECT EXAMINATION

Q. (By Mr. Katz) I'm showing you a piece of paper and I want you to disregard the penciled notations that are printed.

There are a bunch of names and would you look through first the numbers from 1 to 18 and were all those people employed by Stark in the week ending May 11, 1973? A. Yes.

Q. Would you do this, start with No. 1 and read the name and tell us what work or classification that person had. A. Ken Roy Bishop did clean up, plastering, a little of everything, clean up, plastering. He would do some plumbing work, a little of everything. Loaded trucks, delivered furniture.

Roger Evans – do I have to repeat everything or could I say the same? May I say the same?

Q. If you say it is. A. I say it is the same.

Theodore Higby.

Q. Give us No. 3. A. Theodore Higby. He didn't go that far. He

was a time keeper for the men and he went to see what time the guys came in and checked out.

Q. No. 4? A. Wayne Huff, same.

513 Q. You mean the same as the first couple? A. The same as the first. They did some plastering, painting, a little clean up, delivery furniture, a little of everything.

Q. Go ahead. A. No. 5, Joseph Jackson, the same.

No. 6, Stevan King, the same as before, 4, 5, and the first.

7, John Krissel, the same.

No. 8, Lionel Littles, the same as clean up.

Then Daniel Manning, the same. That was No. 9.

No. 10, Lawrence Moultrie, the same.

No. 11, Hector Ortega, the same.

No. 12, besides in being in charge of the men –

Q. Give us his name? A. George Peters, the same.

Q. We have Peters here? A. 13, Charles Plair, the same.

14, Mickey Rodriguez, the same.

15, Edward Roman, the same.

16, Charles Thompson, the same.

He drove, you know, he drove the truck.

Q. In addition? A. Yes.

514 Q. Next? And 17, Jerry Toogood, the same.

18, James Williams, the same.

MR. KATZ: That is all.

RECROSS EXAMINATION

Q. (By Ms. Johnson) with respect to Theodore Higby, how old is Mr. Higby? A. No?

Q. Yes. A. About 80 years old.

JUDGE SCHNEIDER: 80?

THE WITNESS: I think that is what his age is.

Q. Does he do any laboring work, carrying buckets as described?

MR. KATZ: He said he is the timekeeper that is all. We will concede he doesn't do laboring work.

Q. Does he do anything besides timekeeping? A. He will take the time. While on the job he will also, if they are doing cleanup, he can't do heavy work a man of 80, but he will take a broom and sweep up too, clean up jobs. He doesn't stand there and take nothing.

Q. Does he go from job to job taking time? A. No. Sometimes he will take it in the morning when they come in, he will catch the guys and then he holds the records and turns it in.

515 But he will go out on a job, do some cleaning up if there is cleaning up there. He does it on his own.

Q. How long did Jerry Toogood work for you? When did he start and finish? A. I couldn't tell you that.

MR. KATZ: I object on the question of materiality, how long? She asked him how long he worked.

I thought we were concerned with the weeks in May. If he was an employee what difference does it make whether he worked there eight years or three months or one month?

JUDGE SCHNEIDER: I am not trying to establish the appropriate unit.

MS. JOHNSON: Your Honor, I think it is relevant because they are bringing up the number of employees, and I would like to bring up the fact that at least four of these employees on the list were very short term.

Mr. Toogood for example worked a week, according to their affidavit, starting May 11th.

JUDGE SCHNEIDER: You may continue.

MS. JOHNSON: Could I have this marked or identified as General Counsel Exhibit 5?

(Document marked General Counsel's Exhibit 5 for identification, of this date.)

Q. I show you General Counsel's Exhibit 5. Is that your signature at
516 the end? A. Yes.

Q. Were you advised by counsel before you signed this? A. Yes.

Q. You testified before that you did not remember how long Jerry Toogood worked for you. Could you read this?

MR. KATZ: May I on this issue, I assume she is reading from a January, 1974 affidavit that he gave. I have no objection. Let it go into evidence.

He has got the breakdown on the dates.

I see on page 2 that is what she is talking about. Somebody worked there and what they did or what they didn't do and I have no objection to this affidavit going in.

JUDGE SCHNEIDER: I don't want anything more to read than I have to. If it is all relevant, all right, offer it in evidence, but if it is not I would prefer it not being in the record. I have enough reading matter.

MR. KATZ: What was the question, please?

MS. JOHNSON: I asked the witness to read the initial part of Part 4.

Would you read it out loud? A. The following men were hired as a regular full time members of the last crew during the week ending on the first date indicated in parenthesis.

After their represented names and they quit as of the second date in paren-
517 thesis after their respective names.

Q. Would you read the names? A. Jerry H. Toogood, Edward J. Ronan –

Q. Would you read the names and dates? A. Jerry Toogood the 5th month of 11/73. That would be the 18th of '73.

Q. Read the names as they are there. A. Edward J. Ronan, 4/20/72 until 5/11/73.

John W. Krisel, 4/13/73 to 7/27/73.

Hector Ortega, 4/13/73 to 7/27/73.

Q. Was this statement true? A. Yes.

Q. With respect to Joseph Jackson, isn't it true that he was a painter and in fact he drove his own truck to paint? A. Drove his own truck? No, he didn't.

Q. His own car? Did you furnish him a car for his painting jobs? A. No.

Q. Did he do any work other than painting? A. He did clean up.

Q. With the crew? A. Absolutely.

Q. When he did work on a crew who did he work with? A. Let me see. He was with – I don't know individually. He was with – maybe – I may have sent him with Lionel Littles and Charlie Plain and Dave and they cleaned up apartments which Charlie – they painted apartments too. Charlie Plair would paint it too. Depends.

Q. Principally he was a painter? A. No – he did clean up too.

Q. Does he still work for you? A. Yes, he paints.

Q. You said before that you make assignments in the morning for various jobs. Do you assign him to jobs on regular crews or does he mainly paint? A. He is not the only one who paints. He paints. He may paint more than others.

Q. Does he take other people with him to paint? A. He has, yes.

Q. How long did Daniel Manning work for you? A. I don't know. I don't have the record in front of me. I can't tell you exactly. I can't remember all these date.

Q. Did he work a month, a week?

Do you have any idea? A year? A. He worked more than a month.

Q. Two months? A. More than two months.

Q. Isn't it true that James Williams quit about two weeks before May 11, 1973? A. James Williams? I don't know the proper date. He may
519 have. I'm not sure. I can't remember that.

Q. Do you know who would know? A. In the records I imagine, payroll stubs. Their payroll records may have that indication. I don't write that down personally when a man quits.

There's a lot of them who quit and there's a lot of them who stay.

Q. You don't know whether he quit or whether he didn't?

A. James Williams?

I know one time he had to go for an operation for cataracts. James Williams, yes. Jimmy Williams went for a cataract operation. I'm not sure. I don't know if he quit.

He was gone for a period of time. I don't remember when.

Q. Do you remember when it was? A. No, I can't remember.

MS. JOHNSON: No further questions.

MR. KATZ: No questions.

JUDGE SCHNEIDER: That will be all.

I think it is your position that all of the testimony which the General Counsel put in allegedly implicating the company representing anti-union statements has all been manufactured?

520 MR. KATZ: Yes, yes.

JUDGE SCHNEIDER: It is hardly the type of information which could result from a misunderstanding.

MR. KATZ: I don't understand your question, sir.

JUDGE SCHNEIDER: Well, the assertions that company representatives engaged in anti-union statements are hardly the result of a misunderstanding of other things that management may have said.

So either the things occurred or else they were counterfeited?

MR. KATZ: Right. I say the bald statements as they were made, it is

not a case of misinterpreting or supplying something from it.

JUDGE SCHNEIDER: All right. So I guess that an ordinary garden variety of credibility is what the case is going to turn on?

MS. JOHNSON: Could I move to amend the pleadings to conform to the proof?

MR. KATZ: Only with respect to things like days, but on other issues, no.

MS. JOHNSON: Yes.

JUDGE SCHNEIDER: That is a purely formal amendment.

MS. JOHNSON: Yes.

JUDGE SCHNEIDER: Very well, motion granted.

You will file brief, Mr. Katz?

521 MR. KATZ: I will.

JUDGE SCHNEIDER: You anticipate filing a brief, Ms. Johnson?

MS. JOHNSON: Yes.

JUDGE SCHNEIDER: Very well.

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United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

FRED STARK and JAMAICA 201 ST. CORP., INC. and JAMAICA 202 ST. CORP., INC.,
Respondent.

No. 74-2658

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) ~~two~~ three copies of the Appendix in the above-entitled case, on the following counsel of record, this ~~14th~~ 17th day of March 1975

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